PRESIDNT'S
MESSAGES

—

ENLISTMENTS.

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UNITED STATES OF AMERICA

34TH CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 35.

MESSAGES OF THE PRESIDENT.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE WITH

A RESOLUTION OF THE SENATE OF THE 25TH INST., CALLING FOR CORRESPONDENCE BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND GREAT BRITAIN, RELATIVE TO THE ENLISTMENT OF SOLDIERS BY THE AGENTS OF THE LATTER GOVERNMENT, WITHIN THE TERRITORY OF THE UNITED STATES;

AND THE

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE WITH

A RESOLUTION OF THE SENATE OF THE 28TH INST., CALLING FOR INFORMATION RELATIVE TO ANY PROPOSITION SUBMITTED TO THE UNITED STATES GOVERNMENT BY THAT OF GREAT BRITAIN, TO REFER THE DIFFERENCE BETWEEN THE TWO GOVERNMENTS AS TO THE CONSTRUCTION OF THE TREATY OF JULY 4, 1850, TO ARBITRATION.

1756

Ordered to be printed together; and that 10,000 additional copies be printed, of which 1,000 to be for the use of the Department of State.

WASHINGTON:
A. O. P. NICHOLSON, SENATE PRINTER.
1856.

E431
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MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE WITH

A resolution of the Senate of the 25th instant, calling for correspondence between the governments of the United States and Great Britain, relative to the enlistment of soldiers by the agents of the latter government within the territory of the United States.

FEBRUARY 28, 1856.—Read, and ordered to be printed; and that 10,000 additional copies be printed, 1,000 of which shall be for the use of the State Department.

To the Senate of the United States:

In answer to the resolution of the Senate of the 25th instant, I transmit reports from the Secretary of State and the Attorney General, to whom the resolution was referred.

FRANKLIN PIERCE.

WASHINGTON, *February* 27, 1856.

To the President of the United States:

The Secretary of State, to whom was referred the resolution of the Senate of the 25th instant, requesting the President, if not incompatible with the public interest, to communicate to that body "the correspondence which has taken place between this government and that of Great Britain, in regard to the enlistment of soldiers within the United States by the agents and officers of the latter, for the British army, accompanied by such evidence and documents as the President may deem proper to show the connexion of these agents and officers with the alleged violation of our laws and sovereign rights," has the honor to lay before the President the papers mentioned in the subjoined list.

All of which is respectfully submitted.

W. L. MARCY.

DEPARTMENT OF STATE,
Washington, February 27, 1856.

this rule by the British and French governments, together with the practical observance of it in the present war, would cause it to be henceforth recognised throughout the civilized world as a general principle of international law. This government, from its very commencement, has labored for its recognition as a neutral right. It has incorporated it in many of its treaties with foreign powers. France, Russia, Prussia, and other nations, have, in various ways, fully concurred with the United States in regarding it as a sound and salutary principle, in all respects proper to be incorporated into the law of nations.

The same consideration which has induced her Britannic Majesty, in concurrence with the Emperor of the French, to present it as a concession in the present war, the desire "to preserve the commerce of neutrals from all unnecessary obstruction," will, it is presumed, have equal weight with the belligerents in any future war, and satisfy them that the claims of the principal maritime powers, while neutral, to have it recognised as a rule of international law, are well founded, and should be no longer contested.

To settle the principle that free ships make free goods, except articles contraband of war, and to prevent it from being called again in question from any quarter or under any circumstances, the United States are desirous to unite with other powers in a declaration that it shall be observed by each, hereafter, as a rule of international law.

The exemption of the property of neutrals, not contraband, from seizure and confiscation when laden on board an enemy's vessel, is a right now generally recognised by the law of nations. The President is pleased to perceive, from the declaration of her Britannic Majesty, that the course to be pursued by her cruisers will not bring it into question in the present war.

The undersigned is directed by the President to state to her Majesty's minister to this government that the United States, while claiming the full enjoyment of their rights as a neutral power, will observe the strictest neutrality towards each and all the belligerents. The laws of this country impose severe restrictions not only upon its own citizens, but upon all persons who may be residents within any of the territories of the United States, against equipping privateers, receiving commissions, or enlisting men therein, for the purpose of taking a part in any foreign war. It is not apprehended that there will be any attempt to violate the laws; but should the just expectation of the President be disappointed, he will not fail in his duty to use all the power with which he is invested to enforce obedience to them. Considerations of interest and the obligations of duty alike give assurance that the citizens of the United States will in no way compromit the neutrality of their country by participating in the contest in which the principal powers of Europe are now unhappily engaged.

The undersigned avails himself of this opportunity to renew to Mr. Crampton the assurance of his distinguished consideration.

W. L. MARCY.

JOHN F. CRAMPTON, Esq., *&c.*, *&c.*

[Same, *mutatis mutandis*, to the Count de Sartiges.]

Lord Clarendon to Mr. Crampton.

[Delivered to Mr. Marcy in the course of the month of May, 1855.]

FOREIGN OFFICE, *April* 12, 1855.

SIR: I entirely approve of your proceedings, as reported in your despatch No. 57, of the 12th ult., *with respect to the proposed enlistment in the Queen's service of foreigners and British subjects in the United States.*

The instructions which I addressed to you upon this subject, and those which were sent to the governor of Nova Scotia, were founded upon the reports from various quarters that reached her Majesty's government of the desire felt by many British subjects as well as Germans in the United States to enter the Queen's service for the purpose of taking part in the war in the East; but the law of the United States with respect to enlistment, however conducted, is not only very just but very stringent, according to the report which is enclosed in your despatch, and her Majesty's government would on no account run any risk of infringing this law of the United States.

CLARENDON.

J. F. CRAMPTON, Esq., *&c., &c., &c.*

Mr. Marcy to Mr. Buchanan.

[No. 91.] DEPARTMENT OF STATE,
Washington, June 9, 1855.

SIR: Some time since, it became known that a plan was on foot to enlist soldiers within the limits of the United States to serve in the British army, and that rendezvous for that purpose had been actually opened in some of our principal cities. Besides being a disregard of our sovereign rights as an independent nation, the procedure was a clear and manifest infringement of our laws, enacted for the express purpose of maintaining our neutral relations with other powers. It was not reasonable to suspect that this scheme was in any way countenanced by the British government, or any of its subordinate authorities resident within the United States or in the British North American provinces; but a further examination into the matter has disclosed the fact that it has had not only the countenance, but the active support of some of these authorities, and, to some extent, the sanction of the British government.

When intimations were thrown out that the British consuls in this country were aiding and encouraging this scheme of enlistment within our limits, Mr. Crampton, her Britannic Majesty's minister to this government, showed me the copy of a letter, which he had addressed to one of them, disapproving of the proceeding, and discountenancing it as a violation of our laws. After this act on the part of the British minister, it was confidently believed that this scheme, however it may have originated, and with whatever countenance it might have been

at first looked on by British functionaries, would at once have been abandoned. This reasonable expectation has not been realized; for efforts to raise recruits within the United States for the British army have not been intermitted, but are still prosecuted with energy. To arrest a course of proceedings which so seriously compromitted our neutrality, prosecutions, by the order of the government, were instituted against the offenders. This led to developments which established the fact that the governor of Nova Scotia, apparently with the knowledge and approval of her Majesty's government, had a direct agency in this illegal proceeding.

I herewith send you a copy of an order or notification which has been published in our newspapers, and believed to be genuine, purporting to have been issued by that functionary. It clearly appears from this document that the recruits were to be drawn from the United States; that the engagements with them were to be made within our limits, in open violation of the second section of the act of Congress of the 20th April, 1818; and that British officials were the agents furnished with the means for carrying the illegal measure into effect. These agents have been engaged within our jurisdiction devoting themselves to the execution of this plan.

Notwithstanding the legal measures taken by the officers of the United States to suppress the procedure, the work is still going on. We have accounts of persons constantly leaving the United States for the British provinces, under engagements, contracted here, to enter into the British military service. Such engagements are as much an infringement of our laws as more formal enlistments.

I am directed by the President to instruct you to call the attention of her Majesty's government to this subject. He desires you to ascertain how far persons in official station under the British government acted in the first instance in this matter with its approbation, and what measures, if any, it has since taken to restrain their unjustifiable conduct.

In the early stage of the present war the British government turned its attention towards our neutrality laws, and particularly to the provisions which forbid the fitting out and manning privateers for foreign service. Any remissness on our part in enforcing such provisions would have been regarded by that government as a violation of our neutral relations. No one need be at a loss to conjecture how our conduct would have been viewed by the allies, or what would have been their course towards this country if it had not denounced and resisted any attempt on the part of their enemy to send its agents into our seaports to fit out privateers and engage sailors to man them; but would this government be less censurably neglectful of the duties of neutrality by permitting one of the belligerent powers to recruit its armies within our borders, than by permitting another to resort to our seaports for the purpose of organizing a privateer force to take a part in the present war?

Notwithstanding the ceaseless efforts which this government has made for several years past to restrain our citizens, and foreigners among us, from getting up enterprises to invade or disturb the neighboring possessions of a European power, the British press has loudly

proclaimed, and the British public have been induced to believe, that we have acted in bad faith, and complaisantly looked on, if we have not countenanced, the organization of such expeditions. While England has been severe and acrimonious in abusing the government and people of the United States on the false assumption that we have been neglectful, in this respect, of our duties as a neutral and friendly State, her officers are found among us busily engaged in carrying out a scheme in direct violation of our neutral duties, and of our laws providing for the rigid enforcement of these duties.

Under a consciousness of not deserving the reproach so gratuitously cast upon us by the British press and public, it would hardly comport with a proper sense of self-respect to refer in the way of complaint to these unfounded imputations; but it may not be out of place to notice them when called on to animadvert upon the conduct of these accusers for entering into our territories and openly violating our laws and neutral rights at the same time they are severely arraigning this government for not restraining and punishing others who have, as they allege, committed the same offence.

The excuse offered by the British authorities for enlisting or engaging soldiers to enlist within the United States is, that her Majesty's subjects, and Germans resident therein, had expressed a desire to enter the British army. This fact, if it were unquestionable, would not justify the British authorities in converting the United States into a field for recruiting the British army.

Were not the proceedings in open violation of law, a respect for our obligations of neutrality, and the observance of the comity due to us as a friendly power, would render such a course by either belligerent disrespectful to us.

The value of such an excuse as is interposed by Great Britain in this case may be tested by its application to another in which there should be a change of parties. Would the fact that her Majesty's subjects, as well as Germans and Spaniards, and the subjects of most other nations resident in the United States, had a strong desire to aid the discontented Cubans in their efforts to throw off the domination of Spain, be accepted by Great Britain or the other nations of Europe as an excuse for the conduct of this government if it had actually connived at, or for a moment intermitted its efforts to suppress, expeditions attempted to be organized for aiding an insurrection in the island of Cuba?

Such an excuse, though sanctioned by the authority of the British government, would not be at all satisfactory to other powers, and would be disdained by the United States. This government expects that the conduct of the officers of Great Britain who have been engaged in the scheme to which I have alluded, will be disavowed by her Majesty's government, and these offenders against our neutral rights and laws will be visited with its marked displeasure.

Though the proceedings of this government to frustrate this scheme may have caused the manner of carrying it on to be changed, there is reason to believe that it is still clandestinely prosecuted by British officers with means furnished by their government.

The President will be much pleased to learn that her Majesty's

overnment has not authorized the proceedings herein complained of; nd has condemned the conduct of her officials engaged therein, called hem to account, and taken most decisive measures to put a stop to the illegal and disrespectful procedure.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

No. 80.] LEGATION OF THE UNITED STATES,
London, July 13, 1855.

SIR: * * * * * * * * * *

I herewith transmit the copy of a note addressed by me to Lord C larendon, dated on the 6th instant, and prepared in conformity with y our instructions, (No. 91) on the subject of the enlistment and employment of soldiers for the British army within the limits of the United States, which I trust may recieve your approbation. It was s ent to the Foreign Office on the 7th, but its receipt has not yet been a cknowledged.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES.
London, July 6, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has been instructed to call the attention of the Earl of Clarendon, her Majesty's Principal Secretary of State for Foreign Affairs, to the fact that numerous attempts have been made, since the commencement of the existing war between Great Britain and Russia, to enlist soldiers for the British army within the limits of the United States, and that rendezvous for this purpose have been actually opened in some of their principal cities. When intim ions were thrown out that British consuls in the United States were encouraging and aiding such enlistments, Mr. Crampton, her Britannic Majesty's minister at Washington, exhibited to the Secretary of State the copy of a letter which he had addressed to one of these consuls, disapproving of the proceeding, and discountenancing it as a violation of the neutrality laws of the United States. After this very proper conduct on the part of Mr. Crampton, it was confidently believed that

these attempts to raise military forces within the territory of a neutral nation, from whatever source they may have originated, would at once have been abandoned. This reasonable expectation has not been realized, and efforts to raise recruits within the United States for the British army are still prosecuted with energy, though chiefly in a somewhat different form. To arrest a course of proceeding which so seriously compromitted the neutrality of the nation in the existing war, prosecutions were instituted, by order of the American government, against the offenders. This led to developments establishing the fact that the lieutenant-governor of Nova Scotia has had a direct agency in attempts to violate the neutrality laws of the United States. This will appear from the copy of a notification issued by that functionary, dated at Halifax, on the 15th March last, and believed to be genuine, a copy of which the undersigned has now the honor to communicate to the Earl of Clarendon. This notification has been published in the newspapers of the United States. In consequence, it is believed, of this document, purporting to be official, the practice of recruiting still proceeds with vigor, notwithstanding the legal measures adopted by the officers of the United States to suppress it. The American government are constantly receiving information that persons are leaving, and have left the United States, under engagements contracted within their limits, to enlist as soldiers in the British army, on their arrival in the British provinces. These persons are provided with ready means of transit to Nova Scotia, in consequence of the express promise of the lieutenant-governor of that province to "pay to Nova Scotian and other shipmasters" the cost of a passage for each poor man, "*willing to serve her Majesty*," "shipped from Philadelphia, New York or Boston."

The disclosures made within the very last month, upon a judicial investigation at Boston, (a report of which is now before the undersigned,) afford good reason to believe that an extensive plan has been organized by British functionaries and agents, and is now in successful operation in different parts of the Union, to furnish recruits for the British army.

All these acts have been performed in direct violation of the second section of the act of Congress of the 20th April, 1818, which provides, "That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years," &c.

The plain and imperative duties of neutrality, under the law of nations, require that a neutral nation shall not suffer its territory to become the theatre on which one of the belligerents might raise armies to wage war against the other. If such a permission were granted, the partiality which this would manifest in favor of one belligerent to the prejudice of the other, could not fail to produce just complaints

on the part of the injured belligerent, and might eventually involve the neutral as a party in the war.

The government of the United States, however, did not leave the enforcement of its neutral obligations to rest alone on the law of nations. At an early period of its history, in June, 1794, under the administration of General Washington, an act of Congress was passed defining and enforcing its neutral duties; and this act has been supplied, extended, and enlarged by the act already referred to, and now in force, of the 20th April, 1818. Under both these acts the very same penalties are imposed upon all persons implicated, whether the actual enlistment takes place within the territory of the United States, or whether an engagement is entered into to go beyond the limits or jurisdiction of the United States "with intent to be enlisted or entered in the service of any foreign Prince," &c., &c. Without the latter provision, the former might be easily evaded in the manner proposed by the lieutenant-governor of Nova Scotia. If the law permitted any individuals, whether official or unofficial, to engage persons in Philadelphia, New York, and Boston to serve in the British army, and to enter into contracts to transport them to Halifax, there to complete the formal act of enlistment, then it is manifest that this law, to a very great extent, would become a dead letter.

The undersigned is happy to know that in this respect the policy of the British government is identical with that of the United States. The foreign enlistment act, (59 Geo. 3, ch. 69,) like the act of Congress, inflicts the same penalties upon any individual who shall, within the British dominions, engage "any person or persons whatever" "to go, or to agree to go, or embark from any part of his Majesty's dominions, for the purpose or with intent to be so enlisted," as though the enlistment had actually taken place within the same.

And here it may be worthy of remark, that neither the foreign enlistment act, nor the act of Congress, is confined to the enlistment or engagement of British subjects or American citizens, respectively, but rightfully extends to individuals of all nations—"to any person whatever." The reason is manifest. The injury to the neutral principally consists in the violation of its territorial sovereignty by the belligerent for the purpose of raising armies; and this is the same, no matter what may be the national character of the persons who may agree to enter the service.

The government of the United States can look back with satisfaction to the manner in which it has performed its neutral duties at every period of its history; and this often at the imminent risk of being involved in war.

In the early stage of the present war, the British government very properly turned its attention towards the neutrality laws of the United States; and particularly to the provisions which forbid the fitting out and manning privateers for foreign service. Any remissness in enforcing such provisions would have been justly regarded by that government as a violation of the neutral relations of the United States. It is not difficult to conjecture in what light the conduct of the American government would have been viewed by the allies had it not denounced and resisted any attempt on the part of their enemy to send

its agents into the ports of the United States to fit out privateers, and engage sailors to man them. But would the government of the United States be less censurably neglectful of the duties of neutrality were it now to suffer one of the allies to recruit armies within its borders, than it would have been had it permitted the other belligerent to resort to American seaports for the purpose of organizing a privateer force to take a part in the present war?

In view of all these considerations, the President has instructed the undersigned to ascertain from the Earl of Clarendon how far persons in official station under the British government have acted, whether with or without its approbation, either in enlisting persons within the United States, or engaging them to proceed from thence to the British provinces for the purpose of being there enlisted; and what measures, if any, have been taken to restrain their unjustifiable conduct.

The President will be much gratified to learn that her Majesty's government has not authorized these proceedings, but has condemned the conduct of its officials engaged therein, and has visited them with its marked displeasure, as well as taken decisive measures to put a stop to conduct so contrary to the law of nations, the laws of the United States, and the comity which ought ever to prevail in the intercourse between two friendly powers.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

Mr. Marcy to Mr. Buchanan.

[No. 102.]

DEPARTMENT OF STATE,
Washington, July 15, 1855.

SIR: Since my despatch of the 9th ultimo, in relation to recruiting soldiers within the United States for the British army, information has been received here that the business is not only continued, but prosecuted with increased vigor and success, and there is no doubt that it is carried on by the efficient aid of the officers and agents of the British government. It was expected, after the attention of her Britannic Majesty's minister near this government was directed to this subject, and after he had presented Lord Clarendon's note of the 12th of April last to this department, and given assurances that steps had been taken to arrest the illegal procedure, that we should have witnessed no further participation by British functionaries in the attempt to invade our sovereignty and defy our laws.

Something more than the disavowal then made to this department was looked for from the British government, which had, as it appears by Lord Clarendon's note, countenanced this aggression upon our rights. It was reasonably expected that her Britannic Majesty's government would have considered it due to the friendly relations between the two countries not merely to reprove its officers engaged in this scheme of raising recruits within our jurisdiction, but promptly

to retrace the steps which had been taken, and at once to arrest the illegal proceedings; but this government is not aware that any such course has been taken: on the contrary, it has reason to believe that the machinery first put in operation is still at work, and is still managed by British functionaries. The notification of the governor of Nova Scotia (a copy of which accompanied my despatch of the 9th ultimo) is unrevoked; agents in our principal cities are now busily engaged in making contracts with persons to go into the British provinces and there to complete their enrolment in the British army; liberal advances still continue to be made as an inducement for entering into such engagements, and a free passage to the British provinces is provided for them. The facts that these persons receive compensation for their engagements, are taken to the provinces free of charge, and there treated as under obligation to perfect their enlistment in the British army, show that what has been done in the United States was set on foot by the British officers in the provinces, and that this scheme was not abandoned after the presentation of Lord Clarendon's note of the 12th of April, 1855, but is continued down to the present time, and is prosecuted with more vigor and effect than at any previous period.

If an apology, grounded upon an alleged ignorance of our laws, could be offered for introducing this scheme for recruiting the British army by men drawn from the United States, that excuse could not be available after the provisions of these laws were first made known to those engaged in the scheme.

Since that time many months have elapsed, and the British officers, with a full knowledge of the illegality of the procedure and of its offensive character to the government and people of the United States as an open contempt of their sovereign rights, persist in carrying on this obnoxious scheme without any open disapproval by the home government, or any attempt to arrest it.

This persistence of British officers, residents here or in the provinces, in countenancing and aiding unrestrained by their government, and apparently with its approval, to carry out this device of drawing recruits for the British army from the United States, gives grave importance to the subject, and calls, as the President believes, for some decisive reparation.

It is presumed that her Britannic Majesty's government will regard it as due to the friendly relations between the two countries which are alike cherished by both, to explain the course it has pursued in this case; what countenance was given to it in the beginning, and what has been subsequently done to put a stop to it.

Having at an early stage in the proceedings become aware of the illegal conduct of its officials in this matter, and the objectionable light in which that conduct was viewed by this government, it is not to be supposed that proper measures were not taken by her Britannic Majesty's government to suppress all further attempts to carry out this scheme of enlistment and to punish those who persevered in it. It would afford satisfaction to be informed what measures were adopted by her Majesty's government to arrest the mischief; but whatever they were, it is evident they have proved ineffectual, for the

ground of complaint still exists, and the practice is continued by the agency of persons beyond the limits of the United States as well as those within them, under circumstances which render a resort to criminal prosecutions inadequate to suppress it.

The President is disposed to believe that her Majesty's government has not countenanced the illegal proceedings of its officers and agents since its attention was first directed to the subject, and will consider it alike due to itself and to the United States to disavow their acts, and deal with them in such a manner as their grave offence merits. As recruiting for the British army, in the mode alluded to, is still prosecuted within the United States by officers and agents employed for that purpose, the President instructs you to say to her Majesty's government that he expects it will take prompt and effective measures to arrest their proceedings, and to discharge from service those persons now in it who were enlisted within the United States, or who left the United States under contracts made here to enter and serve as soldiers in the British army.

These measures of redress cannot, as the President conceives, be withheld on any other ground than the assertion of a right, on the part of Great Britain, to employ officers and agents to recruit her military forces within our limits in defiance of our laws, and our sovereign rights. It is not anticipated that any such pretext will be alleged: it certainly cannot be permitted to be a subject of discussion.*

The President instructs you to present the views contained in this despatch to her Britannic Majesty's government.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., *&c.*, *&c.*

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 81.] LEGATION OF THE UNITED STATES,
London, *July* 20, 1855.

SIR: * * * * * * * * * * *

I transmit the copy of a note received from Lord Clarendon, dated on the 16th instant, in answer to mine of the 6th instant, on the subject of the enlistment and employment of soldiers for the British army within the limits of the United States. In acknowledging the receipt of this note, I have informed his lordship that I shall have much satisfaction in transmitting a copy of it to the Secretary of State, by the next steamer.

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Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

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* This paragraph was omitted in the copy handed to Lord Clarendon.

Lord Clarendon to Mr. Buchanan.

FOREIGN OFFICE, *July* 16, 1855.

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note which Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the Unitad States, addressed to him on the 6th instant, respecting attempts stated to have recently been made to enlist, within the limits of the United States, soldiers for the British army.

The undersigned must in the first instance express the regret of her Majesty's government if the law of the United States has been in any way infringed by persons acting with or without any authority from them; and it is hardly necessary for the undersigned to assure Mr. Buchanan that any such infringement of the law of the United States is entirely contrary to the wishes and to the positive instructions of her Majesty's government.

The undersigned, however, thinks it right to state to Mr. Buchanan that some months ago her Majesty's government were informed, from various sources, that in the British North American possessions, as well as in the United States, there were many subjects of the Queen who, from sentiments of loyalty, and many foreigners who, from political feeling, were anxious to enter her Majesty's service, and to take part in the war. Her Majesty's government, desirous of availing themselves of the offers of these volunteers, adopted the measures necessary for making generally known that her Majesty's government were ready to do so, and for receiving such persons as should present themselves at an appointed place in one of the British possessions. The right of her Majesty's government to act in this way was incontestable; but at the same time they issued stringent instructions to guard against any violation of the United States law of neutrality; the importance and sound policy of which law have been so well expounded by Mr. Buchanan, in whose remarks upon it, as well as upon the foreign enlistment bill of this country, her Majesty's government entirely concur.

It can scarcely be matter of surprise that, when it became known that her Majesty's government was prepared to accept these voluntary offers, many persons in various quarters should give themselves out as agents employed by the British government, in the hope of earning reward by promoting, though on their own responsibility, an object which they were aware was favorably looked upon by the British government. Her Majesty's government do not deny that the acts and advertisements of these self-constituted and unauthorized agents were in many instances undoubted violations of the law of the United States; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed.

With respect to the proclamation by the lieutenant governor of Nova Scotia, enclosed in Mr. Buchanan's note, the undersigned can assure Mr. Buchanan, with reference both to the character of Sir Gaspard le Marchant, and to the instructions he received, as well as to his correspondence on these instructions, that that officer is quite

incapable of intentionally acting against the law of the United States; and in proof that he did not in fact do so, the undersigned begs leave to refer Mr. Buchanan to the legal decision given on the particular point adverted to by Mr. Buchanan, by Judge Kane, on the 22d of May last, in the United States circuit court at Philadelphia. The judge says: "I do not think that the payment of the passage from this country of a man who desires to enlist in a foreign port, comes within the act." [The neutrality act of 1818.] "In the terms of the printed proclamation, there is nothing conflicting with the laws of the United States. A person may go abroad, provided the enlistment be in a foreign place, not having accepted and exercised a commission. There is some evidence in Hertz's case that he did hire and retain, and therefore his case would have to be submitted to a jury. In Perkins's case there was testimony upon which a jury might convict. In Bucknell's case it appears that there was a conversation at which he was present, but there was no enlistment, or hiring, or retaining. The conversation related as to the practicability of persons going to Nova Scotia to enlist. If the rule I have laid down be correct, then the evidence does not connect him with the misdemeanor." "Mr. Bucknell is, therefore, discharged, and Messrs. Perkins and Hertz are remanded to take their trial."

As regards the proceedings of her Majesty's government, the undersigned has the honor to inform Mr. Buchanan that Mr. Crampton was directed to issue strict orders to British consuls in the United States to be careful not to violate the law, and Mr. Crampton was enjoined, above all, to *have no concealment from the government of the United States*. In the absence of Mr. Crampton from Washington, her Majesty's chargé d'affaires placed in Mr. Marcy's hands a despatch from the undersigned on this subject, expressly stating that "her Majesty's government would on no account run any risk of infringing this (the neutrality) law of the United States."

The undersigned has, however, the honor, in conclusion, to state to Mr. Buchanan that her Majesty's government—having reason to think that no precautionary measures, with whatever honesty they might be carried out, could effectually guard against some real or apparent infringement of the law, which would give just cause for complaint to the government of the United States—determined that all proceedings for enlistment should be put an end to, and instructions to that effect were sent out before the undersigned had the honor to receive Mr. Buchanan's note, as the undersigned need hardly say that the advantage which her Majesty's service might derive from enlistment in North America would not be sought for by her Majesty's government, if it were supposed to be obtained in disregard of the respect due to the law of the United States.

The undersigned has the honor to renew to Mr. Buchanan the assurance of his highest consideration.

CLARENDON.

Hon. JAMES BUCHANAN.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 83.] LEGATION OF THE UNITED STATES,
London, August 3, 1855.

SIR: * * * * * * * * * *

You will observe, by the London Times of this morning, that Lord Palmerston last night in the House of Commons, in answer to an inquiry of Mr. Thomas Milnor Gibson, stated as follows: "With regard to the question which arose in the United States [respecting the enlistment or engagement of soldiers for the Foreign Legion,] I beg to inform the right honorable gentleman that a similar arrangement [to that at Heligoland] was made at Halifax, by which any persons going there, from whatever quarter, might be enrolled; but it appearing that that had led to questions within the territory of the United States as to whether or not the law of that country had been violated, her Majesty's government being desirous that no such questions should by possibility arise, has put an end to the enlistment of forces which used to take place at Halifax."

* * * * * * * * * * *

Yours, very respectfully,
JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Crampton.

DEPARTMENT OF STATE,
Washington, September 5, 1855.

SIR: Having ascertained that the scheme to raise recruits for the British army within the limits of the United States was vigorously prosecuted after our first conversation on the subject, and that officers of her Britannic Majesty's government were taking an active part in it, notwithstanding the disapprobation of this government was well known, the President directed Mr. Buchanan, the United States minister at London, to be instructed to bring the subject to the attention of Lord Clarendon, her Majesty's Principal Secretary of State for Foreign Affairs. Lord Clarendon, in his reply to Mr. Buchanan's note to him of the 6th of July last, admits that her Majesty's government did concur in and authorize some measures to be taken to introduce persons resident in the United States into the British army, but places the justification of the proceedings thus authorized upon the narrow ground that "stringent instructions" were issued to the British officers and agents to guard against any violation of the United States law of neutrality; and his Lordship expresses a confident opinion that these instructions have been scrupulously observed.

He is fully aware that volunteers have embarked in the scheme, who have violated our laws. Though it was anticipted, as he confesses, that such volunteers, assuming to be agents of her Majesty's government, would take a part in carrying out the authorized scheme of drawing recruits from the United States, and would be likely to infringe our laws; yet as they were, as he alleges, self-constituted and unauthorized agents, he assumes that no responsibility for their conduct attaches to her Majesty's government or its officers.

In authorizing a plan of recruitment which was to be carried out in part within our territories, the British government seems to have forgotten that the United States had sovereign rights, as well as municipal laws, which were entitled to its respect. For very obvious reasons the officers employed by her Majesty's government in raising recruits from the United States would, of course, be cautioned to avoid exposing themselves to the penalties prescribed by our laws; but the United States had a right to expect something more than precautions to evade those penalties: they had a right to expect that the government and officers of Great Britain would regard the policy indicated by these laws, and respect our sovereign rights as an independent and friendly power.

It is exceedingly to be regretted that this international aspect of the case was overlooked. As to the officers of the British government, it is not barely a question whether they have or have not exposed themselves to the penalties of our laws, but whether they have in their proceedings violated international law and offered an affront to the sovereignty of the United States. As functionaries of a foreign government, their duties towards this country as a neutral and sovereign power are not prescribed by our legislative enactments, but by the law of nations. In this respect their relation to this government differs from that of private persons. Had there been no acts of Congress on the subject, foreign governments are forbidden by that law to do anything which would in any manner put to hazard our position of neutrality in respect to the belligerents.

The information which has been laid before the President has convinced him that the proceedings resorted to for the purpose of drawing recruits from this country for the British army have been instigated and carried on by the active agency of British officers, and that their participation therein has involved them in the double offence of infringing our laws and violating our sovereign territorial rights.

If there were sufficient reasons to believe that by skilfully interposing private persons as ostensible actors in carrying out their arrangements, these officers have successfully shielded themselves from the penalties of our laws, still they, as well as their government, if they have acted by its authority, are responsible as parties to a procedure which constitutes an international offence of such a grave character as cannot be passed unnoticed by this government. While strenuously exerting its authority, as it has frequently done, and is still doing, to prosecute and punish its own citizens for infringing its obligations of neutrality, it could not allow itself to pass lightly over the like offence committed by foreigners acting as the authorized agents of another government.

The case which the United States feel bound to present to her

Majesty's government, involves considerations not embraced in Lord Clarendon's reply to Mr. Buchanan's note. The question is not whether that government has authorized, or any of its officers have done acts for which the punishment denounced by our laws can be inflicted, but whether they participated in any form or manner in proceedings contrary to international law, or derogatory to our national sovereignty. It is not now necessary, therefore, to consider what technical defence these officers might interpose if on trial for violating our municipal laws.

This whole scheme of raising recruits for the British army within or from the United States, together with the agents and means used to carry it out, is now in the way of being developed, and I regret that the disclosures already made appear to implicate so many of her Majesty's officers resident as well in the United States as in the adjacent British provinces. The President perceives with much regret that the disclosures implicate you in these proceedings. He has, therefore, preferred to communicate the views contained in this note to her Majesty's government through you, her representative here, rather than through our minister at London. The information in his possession does not allow him to doubt that yourself, as well as the lieutenant governor of Nova Scotia, and several civil and military officers of the British government of rank in the provinces, were instrumental in setting on foot this scheme of enlistment; have offered inducements to agents to embark in it, and approved of the arrangements for carrying it out, which embraced various recruiting establishments in different cities of the United States, and made liberal provision for funds to be used as inducements for persons residing therein to leave the country for the purpose of enlisting in the British military service. These arrangements are utterly incompatible with any pretence that they were designed merely to afford facilities to British subjects or other foreigners in this country to carry out their wishes, prompted purely by "sentiments of loyalty" or "political feeling," to participate with the allies in the existing war in Europe.

The information in the possession of this government is so well established by proof, and corroborated by so many public acts, that the President feels warranted in presenting to the British government this conduct of her Majesty's officers, as disrespectful to the United States and incompatible with the friendly relations between the two countries.

Among the solemn duties imposed upon the President is that of maintaining and causing to be respected the sovereign rights of the United States, and to vindicate before the world their good faith in sustaining neutral relations with other powers; and from this duty he will not allow himself to be diverted, however unpleasantly it may affect his personal or official relations with individuals.

The course which the President would deem it proper to take, towards the implicated officers within the United States, depends in some measure upon their relation to their government in this matter. Lord Clarendon's note of the 16th of July does not make it quite clear that her Majesty's government is prepared to disavow the acts complained of and to throw the entire responsibility of them upon its

officers and agents. "Stringent instructions" were undoubtedly given to her Majesty's officers "to guard against any violation of the United States law of neutrality;" but it does not appear that respect for our territorial sovereignty, or the well known policy of the United States as a neutral, not specifically embraced in our municipal enactments, was enjoined. The instructions might therefore be formally complied with, and these officers at the same time do acts which constitute an offence against our rights as a sovereign power. Such acts it is believed they have committed; whether with or without the approval or countenance of their government does not authoritatively appear.

Lord Clarendon, it is apprehended, was not well informed as to the proceedings which had taken place in regard to the recruitments in this country, when he expressed the opinion that the persons engaged in carrying them out, whose conduct he does not deny was illegal, were self-constituted and unauthorized agents. This government has good reasons for believing that these agents had the direct sanction of British officers for their conduct, and were employed by them.

If these officers are sustained in what they have done, and authorized others to do in this matter, by their government, the President will look to that government in the first instance, at least for a proper measure of satisfaction; but if their conduct is disavowed, and declared to have been contrary to the instructions and without the countenance or sanction of her Majesty's government, the course imposed upon him by a sense of duty will in that case be changed.

The object of this note is to ascertain how far the acts of the known and acknowledged agents of the British government, done within the United States, in carrying out this scheme of recruiting for the British army, have been authorized or sanctioned by her Majesty's government.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

W. L. MARCY.

JOHN F. CRAMPTON, Esq., &c., &c., &c.

Mr. Crampton to Mr. Marcy.

WASHINGTON, *September* 7, 1855.

SIR: I have the honor to acknowledge the receipt of your note of the 5th instant, upon the subject of alleged recruitments in the United States of soldiers for the British army.

As your note, although addressed to myself, refers in a great measure to a correspondence which has taken place between Lord Clarendon and Mr. Buchanan, on the same subject, I have thought it expedient to defer replying at length to your present communication, until I shall have been more fully put into possession of the views of her Majesty's government, in regard to all the matters to which it relates.

I shall then do myself the honor of addressing to you a further communication; and I confidently trust that I shall be enabled alto-

gether to remove the unfavorable impression which has been created as to the motives and conduct of her Majesty's government, and their officers, including myself, in regard to this matter.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

Hon. W. L. MARCY, &c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 107.] DEPARTMENT OF STATE,
Washington, September 8, 1855.

SIR: In my private letter of the 2d instant, I informed you that I had prepared an official note, relative to the British enlistments within the United States, to which British officers were auxiliary. As Mr. Crampton was personally implicated, it was determined to send it to him, although other communications on the subject had been addressed to you.

The note was sent to Mr. Crampton on the 5th instant, and yesterday I received one from him, in which he informs me that he shall send my note to his government for directions as to the reply.

I herewith transmit to you copies of the notes above alluded to, together with copies of a part of the proofs in possession of this government on the subject, implicating her Britannic Majesty's officers. I do not believe Strobel's statement can be successfully impeached. I am quite sure it cannot be in its essential parts. Lord Clarendon must have been misinformed as to the actual state of things here, when he assured you that the persons who had violated our neutrality law were self-constituted and unauthorized agents. If the British government choose to take pains to ascertain what disposition has been made of the large sums of money expended in carrying out the scheme of enlistments in this country, it will find that a considerable amount of it has gone into the hands of these agents, and that it was paid to them for the purpose of being expended in the United States, in raising recruits for the British military service.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 93.] LEGATION OF THE UNITED STATES,
London, September 28, 1855.

SIR: I have the honor to acknowledge the receipt of your despatch No. 107, of the 8th instant, with the accompanying documents.

I transmit to you the copy of a note of yesterday's date, received this morning from Lord Clarendon, in reference to your note to Mr. Crampton of the 5th instant on the subject of British recruitments in the United States, together with a copy of my note of this date acknowledging its receipt. I have been thus prompt in notifying his lordship that I had no instructions which would warrant me in interfering with the correspondence commenced between Mr. Crampton and yourself at Washington, so that there might be no reason for any delay on the part of the British government in sending their instructions to that gentleman. I doubt very much, however, whether the confident trust expressed by him in his note to you of the 7th instant will be realized, that after having been more fully put into possession of the views of his government he "shall be enabled altogether to remove the unfavorable impression which has been created as to the motives and conduct of her Majesty's government and their officers, including myself, [himself,] in regard to this matter." Lord Clarendon's note to me of yesterday renders it improbable that Mr. Crampton will receive any such instructions; and I doubt whether the expression of his confident trust to this effect has received the approbation of his lordship.

I also transmit a copy of my note of the 18th July last to Lord Clarendon, to which he refers in his note to me of yesterday. I communicated to you the substance of this note in my No. 81, of the 20th July, though at that time I did not deem it necessary to send a full copy.

I have not time at present, before the closing of the bag, to make some observations which I had intended to do on the subject. I may resume it next week.

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Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Lord Clarendon to Mr. Buchanan.

FOREIGN OFFICE, *September* 27, 1855.

Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the United States at this court, will probably have received from his government a copy of a letter which Mr. Marcy, Secretary of State of the United States, addressed to Mr. Crampton, her Britannic Majesty's envoy extraordinary and minister plenipotentiary in the United States, on the 5th of this month, on the subject of the communication which the undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, had the honor to make to Mr. Buchanan on the 16th of July, in reply to his note of the 6th of that month, complaining of the proceedings of British agents and British colonial authorities in raising within the States of the Union recruits for the British

military service, in violation (as was alleged) of the act of Congress of the 20th of April, 1818.

The undersigned had hoped, from the answer which he received from Mr. Buchanan on the 18th of July, that the explanations and assurances which he had given on this subject in his note of the 16th of that month would have proved as satisfactory to the government of the United States as they appeared to be to Mr. Buchanan; and it was therefore with no less disappointment than regret, that her Majesty's government perused the letter addressed by Mr. Marcy to Mr. Crampton on the 5th instant, of which the undersigned encloses a copy to Mr. Buchanan in case he should not have received it from Washington.

In this letter, Mr. Marcy, laying less stress than Mr. Buchanan did upon the alleged infraction of the municipal laws of the United States, dwells chiefly upon the point, which was but slightly adverted to by Mr. Buchanan, of an assumed disregard of the sovereign rights of the United States on the part of the British authorities or the agents employed by them.

Her Majesty's government have no reason to believe that such has been the conduct of any persons in the employment of her Majesty, and it is needless to say that any person so employed would have departed no less from the intentions of her Majesty's government by violating international law, or by offering an affront to the sovereignty of the United States, than by infringing the municipal laws of the Union to which Mr. Buchanan more particularly called the attention of the undersigned. Her Majesty's government feel confident that even the extraordinary measures which have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under despotic institutions, but which are disdained by all free and enlightened governments, will fail to establish any well-founded charge against her Majesty's servants.

The British government is fully aware of the obligations of international duties, and is no less mindful of those obligations than is the government of the United States. The observance of those obligations ought, undoubtedly, to be reciprocal; and her Majesty's government do not impute to the government of the United States, that while claiming an observance of those obligations by Great Britain, they are lax in enforcing a respect for those obligations within the Union.

But as this subject has been mooted by Mr. Marcy, her Majesty's government cannot refrain from some few remarks respecting it.

The United States profess neutrality in the present war between the Western Powers and Russia; but have no acts been done within the United States, by citizens thereof, which accord little with the spirit of neutrality? Have not arms and ammunition, and warlike stores of various kinds, been sent in large quantities from the United States for the service of Russia? Have not plots been openly avowed, and conspiracies entered into without disguise or hindrance, in various parts of the Union, to take advantage of the war in which Great Britain is engaged, and to seize the opportunity for promoting insurrection in

her Majesty's dominions, and the invasion thereof by an armed force proceeding from the United States?

Her Majesty's government have been silent on these matters, which they did not consider indicative of the general feelings of the American people; for, remembering the many ties and sympathies which connect the people of the United States with the two powerful nations who are engaged in the present contest with Russia, they were convinced that a free, enlightened, and generous race, such as the citizens of the great North American Union, must entertain, on the important questions at issue, sentiments in harmony with those which animate not only the British and French nations, but the great mass of the nations of Western Europe; and her Majesty's government would not have adverted to the exceptional course pursued by a certain number of individuals, if it had not been for the above-mentioned statements in Mr. Marcy's note.

But her Majesty's government think themselves entitled to claim the same credit for sincerity of purpose and uprightness of conduct which they readily allow to the government of the United States; and to expect that their assurance should be received, that as they have enjoined on all her Majesty's servants a strict observance of the laws of the United States, so they have no reason to believe that any of her Majesty's servants, or any agents duly authorized by those servants, have disregarded those injunctions in respect to the matters which form the subject of this note.

The undersigned requests Mr. Buchanan to accept the assurance of his highest consideration.

CLARENDON.

Hon. JAMES BUCHANAN, &c., &c., &c.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, September 28, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note, dated on the 27th instant, from the Earl of Clarendon, her Majesty's Principal Secretary of State for Foreign Affairs, in reference to the note of the 5th instant, addressed by Mr. Marcy, the Secretary of State, to Mr. Crampton, her Britannic Majesty's minister at Washington, on the subject of the enlistment and engagement of soldiers for the British army within the limits of the United States: and he will not fail to transmit to Washington a copy of his lordship's note by to-morrow's steamer.

The undersigned forbears to make any observations on this note, or to interfere in any manner with the correspondence commenced at Washington between the Secretary of State and Mr. Crampton, as he has received no instructions which would warrant him in so doing.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

The Right Honorable the EARL OF CLARENDON,
&c., &c., &c.

Mr. Buchanan to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, July 18, 1855.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note which the Earl of Clarendon, her Majesty's Principal Secretary of State for Foreign Affairs, addressed to him on the 16th instant, in answer to his note of the 6th instant, on the subject of the enlistment and employment of soldiers for the British army within the United States; and the undersigned will have much satisfaction in transmitting a copy of his lordship's note to the Secretary of State by the next steamer.

The undersigned has the honor to renew to the Earl of Clarendon the assurance of his distinguished consideration.

JAMES BUCHANAN.

The Right Honorable the EARL OF CLARENDON,
&c., &c., &c.

Mr. Marcy to Mr. Buchanan.

[No. 113.] DEPARTMENT OF STATE,
Washington, October 1, 1855.

SIR: I herewith send you papers containing the report of the trial of Hurtz, for a violation of our neutrality laws by enlisting soldiers for the British army.

The testimony shows that Mr. Crampton and several other British officials are deeply implicated in the transaction. Lord Clarendon's note, in answer to yours bringing the subject to his notice, assumed that none of her Majesty's officers had been in any way engaged in the plan of recruiting within the United States. Had the facts been as he assumed them to be, and this government had had no reason to believe that the measure was not designed to draw recruits from the United States, his lordship's reply would have been satisfactory.

Subsequent developments show that Lord Clarendon was misinformed as to the true state of the case.

The second despatch to you on the subject showed that the ground of grievance was not confined to the mere fact of a violation of our neutrality laws by British officers. It presented the case as a national offence committed by them, irrespective of those laws. These officers

may have contrived to shield themselves from the penalties of our laws, and yet have committed an offence against our sovereign territorial rights. This latter aspect of the case was distinctly presented in my last despatch to you on the subject. It was this view of the case which the President wished you to present to her Majesty's Minister of Foreign Relations.

It is important, with reference to proceedings against British officers residing within the United States, that the President should know whether the government of Great Britain mean to justify or condemn their conduct.

The disclosures which have been made leave no doubt of the fact that some of these officers have taken an active part in raising recruits in the United States. If their conduct was unauthorized and is condemned, it is proper that this government should be apprized of the fact, as well as of the punishment which has been, or is proposed to be, inflicted upon them; but if, on the other hand, the British government approve of the course pursued by its officers, it is important that its determination in that respect should be known.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 94.] LEGATION OF THE UNITED STATES,
London, October 3, 1855.

SIR: * * * * * * * *

In my last despatch, No. 93, of the 28th untimo, I stated that I had not then time, before the closing of the bag, to make the observations I had intended on the subject to which it refers, but intimated that I might do so this week.

The alleged agency of Mr. Crampton in the recruitment of British soldiers within the limits of the United States presents a serious aspect. From the information contained in your despatch (No. 91) of the 9th June, we had reason to expect a different course of conduct on his part. I need scarcely say that, had I been informed that her Britannic Majesty's representative at Washington had placed himself in the position attributed to him by Captain Strobel, I should not have expressed to Lord Clarendon my satisfaction in transmitting to you his note of the 16th July.

It is remarkable that Lord Clarendon, in his note to myself of the 27th ultimo, whilst commenting on your note of the 5th September to Mr. Crampton, should have been totally silent in regard to that gentleman after what you had said respecting his conduct.

I cannot but regard as offensive the remark of his lordship on "the extraordinary measures which," he alleges, "have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under

despotic institutions, but which are disdained by all free and enlightened governments;" though he would doubtless say these were not intended to apply in an offensive sense to the American government. He probably alludes to occurrences at Cincinnati and other places.

If arms and ammunition, and warlike stores of various kinds, have been sent in large quantities from the United States for the service of Russia, as his lordship alleges, this is nothing more than our citizens had a right to do, subject to the risk under the law of contraband. Similar articles have been sent from the United States to Great Britain in large quantities. Besides, at the present moment, and ever since the commencement of the present war, many of our vessels have been engaged as transports, by Great Britain and France, to carry troops and munitions of war to the Crimea. When this business first commenced, I was applied to by masters and agents of American vessels for information as to what penalties they would incur by engaging in it, and I stated to them that their vessels would be lawful prize if captured by the Russians. For this reason I advised them to obtain an indemnity from the government employing them against this risk.

The "plots" to which his lordship refers relate chiefly, I presume, (for I do not know,) to the proceedings and address of the "Massachusetts Irish Emigrant Aid Society" at Boston, on the 14th August. These were republished in the London Times on the 11th September; and you will find an editorial, on this subject, on the following day.

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Yours, very respectfully,
JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,
London, October 30, 1855.

SIR: * * * * * * *

But I have not since taken any action upon your No. 102, for the plainest reason. I had, previously to its arrival, transmitted to you a copy of Lord Clarendon's note, already referred to, of the 16th July, on the subject of the enlistment and employment of soldiers for the British army within our limits, and had informed his lordship, in acknowledging the receipt of this note, that I should have much satisfaction in transmitting a copy of it to the Secretary of State. Of course it would have been improper for me to take any new step in this matter until I should learn whether this note would prove satisfactory to yourself. Again: your No. 102 states that, after many months had elapsed, British officers were still proceeding to violate our laws, and persist "in carrying on the obnoxious scheme without any open disapproval by the home government, or any attempt

to arrest it;" and one of the two express instructions which the President gives me in conclusion is, "to say to her Majesty's government that he expects it will take prompt and effective measures to arrest their proceedings." Now, these measures had been already adopted, but could not possibly have been known to you. Lord Clarendon's note had entirely changed the aspect of the case from the view which you took of it, and must necessarily have taken of it, at the date of your No. 102. The general tenor of this note—its disavowals and its regrets—were certainly conciliatory, and the concluding paragraph, declaring that all proceedings for enlistments in *North America* had been put an end to by her Majesty's government, for the avowed reason that the advantages which her Majesty's service might derive from such enlistments would not be sought for by her Majesty's government if it were supposed to be obtained in disregard of the respect due to the law of the United States, was highly satisfactory. It was for these reasons that I expressed the satisfaction I would have in communicating it to you. Then came the declaration of Lord Palmerston to the same effect in the House of Commons, on the 2d August, in which he explicitly declared that, in order to avoid questions with the United States, the government "had put an end to the enlistment of forces which used to take place at Halifax." This declaration was, to my knowledge, received with much satisfaction by Mr. Milnor Gibson, who had made the inquiry of Lord Palmerston, as well as by many other liberal members of Parliament. Very different, indeed, had been the conduct of the British government in this respect towards certain continental States.

I can assure you that I did not entertain the most remote idea that this question had not been satisfactorily adjusted until I learned the complicity of Mr. Crampton in the affair. This was officially communicated to me in your despatch No. 107, of the 8th, received on the 24th of September, with a copy of your letter to Mr. Crampton, on the 5th, and his answer of the 7th of the same month. From these, it appears you had thought it due to Mr. Crampton, no doubt properly, to take the affair in hand yourself, and this you have done in an able manner in your letter to that gentleman. Thus much I have deemed necessary to place myself *rectus in curia*.

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Marcy to Mr. Buchanan.

[No. 118.] DEPARTMENT OF STATE,
Washington, October 13, 1855.

SIR: The copy of Lord Clarendon's note of the 27th ultimo, which you transmitted to the department with your despatch No. 93, has been received. I have laid it before the President, and am directed to make the following reply:

The case presented to her Britannic Majesty's government, in my

note to Mr. Crampton, contained a distinct charge that British officers and agents had infringed our laws enacted for the maintenance of our duties of neutrality to friendly powers, and that some of these officers and agents in the employment of their government within the United States, and others, residents in the neighboring British provinces, had also violated our sovereign territorial rights by being engaged in recruiting for the British army within our territories. The mode by which this recruiting had been carried on, and the connexion of these with it, were clearly stated.

A scheme for that purpose had been arranged by British officers. Agents had been employed by them to open rendezvous in our principal cities, numerous engagements had been made with recruits, money had been paid to them, and liberal promises of other considerations offered as an inducement for entering into the British service, and they had been taken out by the United States by means furnished by persons in the employment of the British government.

It was also stated that the evidence establishing these allegations against the officers and agents of the British government was of such a character that this government could not reasonably doubt its accuracy.

The President has given to the reply of Lord Clarendon, her Britannic Majesty's Principal Secretary of State for Foreign Affairs, to the case thus presented by this government, the full consideration it is entitled to on account of the high source from which it emanates, and he regrets to be obliged to adopt the conclusion that it is not satisfactory.

This government had a right to look for something more in that reply than an expectation on the part of her Majesty's government "that their assurance should be received that, as they have enjoined on all her Majesty's servants a strict observance of the laws of the United States, so they have no reason to believe that any of her Majesty's servants, or any agents duly authorized by those servants, have disregarded those injunctions in respect to the matters which form the subject of this [Lord Clarendon's] note." This is a very laconic, but certainly a very unsatisfactory answer to the demand of redress by this government for a violation of its laws and an affront to the sovereign rights of this country.

This conclusion adopted by Lord Clarendon is preceded by a general objection to all the evidence by which the charges against the British officers and agents are sustained.

Lord Clarendon declares that the "extraordinary" measures adopted to obtain evidence against her Majesty's servants or their agents, though "sometimes resorted to under despotic institutions, are disdained by all free and enlightened governments." This serious imputation is accompanied with no specification, or even vague allusion to the condemned measures, nor is this government favored by his lordship with any information to guide conjecture as to his meaning.

The only reply which can be made to an allegation so exceedingly indefinite is, that this government has authorized or used no other but ordinary and legitimate modes of obtaining evidence against British officers; nor has it any reason to believe or suspect that any persons, with or without its countenance, have adopted any measures

whatever for obtaining such evidence, which would not find abundant sanction in the established practice of the administration of penal law in Great Britain. It is a significant fact, that on the trials in Philadelphia and New York, in which the accused were convicted for being engaged in carrying out the scheme of recruitments within the United States, no such objection as that by which Lord Clarendon would fain set aside all the evidence as worthless was interposed or made to appear, though some of her Majesty's officers were present at these trials, took a deep interest in the defence of the criminals, and were directly implicated by the proofs as participants in the offence.

Repelling this charge of imitating "despotic institutions," and doing what is "disdained by all free and enlightened governments," it is proper to remark that, if it were sustainable, it would not warrant the conclusion which Lord Clarendon has deduced from it; which is, that the evidence "will fail to establish any well-founded charge against her Majesty's government." It is far from being certain that the measures adopted for obtaining the evidence, even if they had been extraordinary and exceptionable, would invalidate it, for it might still be of such a character as to carry conviction to the mind of the truth of the allegations.

Should her Britannic Majesty's government see fit to disclose any specific objection to the mode by which the evidence has been obtained, or attempt in any other way to impeach it, this government will then feel called on to vindicate its course, and show its ability to sustain its charges by evidence to which no just exception can be taken. Neither the promises on which Lord Clarendon founds his argument for setting aside the testimony against the implicated British officers, nor the inference he deduces from them, can be admitted by this government.

Lord Clarendon must, I think, intend to be understood as impeaching our neutrality in the present war, though there appears to be some indistinctness in his language. In commenting upon so grave a charge, coming from so respectable an authority, it is but fair to quote his own words:

"The United States profess neutrality in the present war between the Western Powers and Russia; but have no acts been done within the United States, by citizens thereof, which accord little with the spirit of neutrality? Have not arms and ammunition, and warlike stores of various kinds, been sent in large quantities from the United States for the service of Russia?"

It is certainly a novel doctrine of international law, that traffic by citizens or subjects of a neutral power with belligerents, though it should be in arms, ammunition, and warlike stores, compromits the neutrality of that power. That the enterprise of individuals, citizens of the United States, may have led them in some instances, and to a limited extent, to trade with Russia, in some of the specified articles, is not denied—nor is it necessary that it should be, for the purpose of vindicating this government from the charge of having disregarded the duties of neutrality in the present war.

Lord Clarendon is most respectfully asked to look on the other side of the case. Have the citizens of the United States had no traffic with Great Britain, during the present war, in arms, ammunition,

and warlike stores? It must be known to his lordship, for it is a matter of notoriety, that our citizens, in their character as individuals, have rendered substantial aid to both England and France in the prosecution of hostilities against Russia. Though Lord Clarendon may have momentarily forgotten, he will readily call to mind the fact, that a large number of our merchant ships have been engaged, from the commencement of the war down to this time, in transporting troops and munitions of war for Great Britain, from British ports either in the United Kingdom or in the Mediterranean, to the Crimea; to say nothing of the numerous American merchant vessels employed in conveying troops and munitions of war from the ports of France.

Private manufacturing establishments in the United States have been resorted to for powder, arms, and warlike stores for the use of the allies, and immense quantities of provisions have been furnished to supply their armies in the Crimea. In the face of these facts, open and known to all the world, it certainly was not expected that the British government would have alluded to the very limited traffic which some of our citizens may have had with Russia, as sustaining a solemn charge against this government for violating neutral obligations towards the allies. Russia may have shared scantily, but the allies have undoubtedly partaken largely, in benefits derived from the capital, the industry, and the inventive genius of American citizens in the progress of the war; but as this government has had no connexion with these proceedings, neither belligerent has any just ground of complaint against it.

Lord Clarendon further asks, "Have not plots been openly avowed, and conspiracies entered into without disguise or hindrance, in various parts of the Union, to take advantage of the war in which Great Britain is engaged, and to seize the opportunity for promoting insurrection in her Majesty's dominions, and the invasion thereof by an armed force proceeding from the United States?"

This government replies that it has no knowledge or belief whatever of the existence of any such plots or conspiracies. It has only seen it stated in English newspapers that a few persons from Ireland had congregated together at Boston or in its vicinity, adopted some resolutions in relation to the condition of their countrymen at home, and made some suggestions in relation to what they regarded as an amelioration of the condition of the land of their birth. It was not here considered a noticeable affair, and only became known to any member of this government by the comments upon it which appeared in the British press. On inquiry, it is ascertained that a very few individuals were present at that meeting, and it was probably the result of the British scheme of recruiting which was at that time vigorously prosecuted in Boston. It was a proceeding no more noticeable, and far less harmful, than the daily machinations of foreign fugitives collected in London against the governments of their native countries. Those who assembled in Boston will probably rejoice at having effected much more than they anticipated when they shall learn that their proceedings have attracted the attention of her Britannic Majesty's government, and been regarded as a disturbing movement against the British dominions.

If the British government believe that plots and conspiracies are

really on foot in any part of the United States, and will furnish any clue by which they can be detected, it may be assured that this government will act promptly and efficiently in bringing them to light, and punishing the offenders; and it will not consider itself in any way relieved from doing its whole duty in this respect by what has taken place here in reference to recruitments for the British army.

This government is not less mindful than that of Great Britain or France of the many ties and sympathies which connect the people of the United States with those two powerful nations, and it will go as far and do as much as either to strengthen and cherish those sentiments, in the hope of making them available for all legitimate purposes to maintain friendly relations, and increase social and commercial intercourse; but Great Britain ought not to indulge the expectation that those sentiments can be permitted to draw the United States over the line which marks their duty to themselves as well as to the belligerents and all friendly powers.

It would be an inexcusable perversion of such sentiments if they were permitted to induce this government to pass unnoticed the violation of its laws, or to throw open its territories to the recruiting officers of any foreign power.

The expectation that the United States would yield to such pretensions, or forbear to claim redress when such an affront to their sovereign rights had been offered, could only be founded on a belief that they were prepared to abandon their position of strict neutrality, and run the hazard of plunging into the struggle which now convulses Europe.

Supported as this government is in the charge made against British officers and agents, of having infringed our laws and violated our sovereign territorial rights, and being able to sustain that charge by competent proof, the President would fail in due respect for the national character of the United States, and in his duty to maintain it, if he did not decline to accept, as a satisfaction for the wrongs complained of, Lord Clarendon's assurance that these officials were enjoined a strict observance of our laws, and that he does not believe that any of them have disregarded the injunction.

This government believes, and has abundant proof to warrant its belief, that her Britannic Majesty's officers and agents have transgressed our laws and disregarded our rights, and that its solemn duty requires that it should vindicate both by insisting upon a proper satisfaction. The President indulges the hope that this demand for redress will be deemed reasonable, and be acceded to by her Britannic Majesty's government.

This government has indicated the satisfaction which it believes it has a right to claim from the British government in my despatch to you of the 15th of July last.

The President directs you to urge upon her Britannic Majesty's government the views contained in that despatch, and to read this to Lord Clarendon, and deliver a copy if he should desire it.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JAMES BUCHANAN, Esq., &c., &c., &c.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 99.] LEGATION OF THE UNITED STATES,
London, November 2, 1855.

SIR: * * * * * * *

According to the appointment mentioned in my last despatch, I met Lord Clarendon yesterday afternoon at the Foreign Office. After some unimportant conversation, I told him that on my return to the legation on Monday last I found a despatch from yourself on the recruitment question, which I had been instructed to read to him, and furnish him a copy if requested. He said he had also despatches from Washington on the same subject. I then stated that Mr. Crampton having promised, in his note of the 7th of September, to address you again after hearing from his lordship, I should be glad to know whether he had furnished instructions to Mr. Crampton for this purpose. He told me he had not; that he had pursued the usual diplomatic course in such cases, in addressing me a note in answer to the note addressed by you to Mr. Crampton. I said, Very well; then your note to me of the 27th of September is the answer to Mr. Marcy's note to Mr. Crampton of the 5th of that month, and the despatch which I was about to read to him was your answer to his note to me of the 27th of September. To this he assented.

I then read to him your despatch to me of the 13th of October, to which he listened throughout with great apparent attention. After the reading he requested a copy, and I delivered him the duplicate which you had forwarded. He then asked what was the nature of the satisfaction from the British government to which you had referred in your despatch just read. I said that the best mode of giving him the information was to read to him this despatch of yours to me, which I accordingly did, * * * * of which he also desired a copy, and I promised to furnish it. I had prepared myself to state in conversation the substance of what this despatch required from the British government; but having the despatch with me, I thought it better at the moment, in order to prevent all misapprehension, to read it to him, as it had evidently been prepared with much care. I have sent him a copy of it to-day. * * * * * * * *

I then stated, his lordship would observe that the government of the United States had two causes of complaint: the one was such violations of our neutrality laws as might be tried and punished in the courts of the United States; the other—to which I especially desired to direct his attention—consisted in a violation of our neutrality, under the general law of nations, by the attempts which had been made by British officers and agents, not punishable under our municipal law, to draw military forces from our territory to recruit their armies in the Crimea. As examples of this, I passed in review the conduct of Mr. Crampton, of the lieutenant governor of Nova Scotia, and the British consuls at New York and Philadelphia.

I observed that, in his note of the 16th July, he had assured me

that the individuals engaged in recruiting in the United States acted upon their individual responsibility, and had no authority for their proceedings from any British officials, by whom their conduct was condemned. In addition, he had stated that instructions had been sent out to Sir Gaspard le Marchant to stop all enlistments in North America. [Yes, his lordship observed, they were sent out on the 22d June last.] I said I had expressed the satisfaction which I felt in transmitting this note to Mr. Marcy, and was, therefore, sorry to say satisfactory proof existed that Mr. Crampton and other British officers had before and since been engaged in aiding and countenancing these proceedings and recruitments. In fact, Wagner had been convicted at New York for a violation of our neutrality law, committed at so late a period as the 3d of August.

Lord Clarendon sat silent and attentive whilst I was making these remarks, and then took from his drawer several sheets of paper, containing extracts from a despatch of Mr. Crampton, (received, as I understood, by the last steamer,) some of which he read to me.

Mr. Crampton emphatically denies the truth of Strobel's testimony and Hertz's confession, as well as all complicity in the recruitments. I expressed my surprise at this, and said that Strobel's character was respectable, so far as I had ever learned, and that his testimony was confirmed by several documents implicating Mr. Crampton, which had been given in evidence on the trial of Hertz. I told him he would see this on a perusal of the trial itself, of which I gave him a copy.

I asked him whether he intended I should communicate to you my recollection of the particular extracts he had read to me from Mr. Crampton's despatch. He said he would prefer I should not; that he would examine and sift the subject with great care, and preferred to present these to you in his own language.

In concluding this part of the conversation, Lord Clarendon declared, in a sincere and emphatic manner, that nothing had been further from the intention of the British government than to violate the neutrality of the United States, or to give them cause of offence. He could also declare, in regard to himself personally, that he would not act in such a manner towards one of the weakest powers—not even towards Monaco—and certainly would not do so towards the great and powerful republic of the United States, for which he had ever entertained the warmest feelings of respect and friendship.

I presume you may expect, ere long, to hear from Lord Clarendon through a note addressed to Mr. Crampton, according to what he says is diplomatic usage.

We afterwards had some conversation about the invasion of Ireland, which I have never treated seriously. In regard to the Russian privateer alleged to be fitting out at the port of New York, I told him that since our last conversation I had seen two gentlemen who had just arrived from New York, who assured me they would be likely to know or have heard of it were any such steamer building, and they treated the report to that effect on this side of the Atlantic as idle and unfounded. In reply, he informed me that the fact was substantiated and the steamer described in a particular manner, which he

detailed, by three depositions which had been forwarded by the British consul at New York to Mr. Crampton, who had brought the subject to your notice, and you had promised to inquire into it.

* * * * *

Yours, very respectfully,
JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 101.] LEGATION OF THE UNITED STATES,
London, November 9, 1855.

SIR: I had an interview with Lord Clarendon on yesterday, by appointment, and shall now report to you, as nearly as I can recollect it, our conversation. After the usual salutations, I said to him: "Your lordship, when we last parted, asked me to help you to keep the peace between the two countries, which I cordially promised to do; and I have come here to-day to make a suggestion to you with this intent.

"You have now learned the prompt and energetic action of the government of the United States in causing the seizure and examination of the vessel at New York which you had learned was intended for a Russian privateer. Upon this examination she has turned out to be the barque Maury, built for the China trade, and bound to Shanghae. The ten iron cannon in the hold and four on deck, together with the other arms on board, were designed to furnish arms to the merchantmen in the Chinese seas, to enable them to defend themselves against the pirates, so numerous in that quarter. The time of her sailing had been announced for three weeks in five daily journals, and she was to take out four Christian missionaries. So satisfactory did the examination prove to be, that Mr. Barclay, the British consul, had himself assented to her discharge.

"Your lordship stated to me at our last meeting that the reason why the British fleet had been sent to the vicinity of the United States was the information you had received that a Russian privateer had been built in New York, and was about to leave that port to prey upon your commerce with Australia. You have now received the clearest evidence, not only that this was all a mistake, as I predicted at the time it would prove to be, but also that the government of the United States has acted with energy and good faith in promptly causing the vessel to be seized and examined. Now, my lord, the cause having proved to be without foundation, the effect ought to cease, and I earnestly suggest to you the propriety of issuing an order to withdraw the fleet."

"The Times accompanied the annunciation that this fleet had been

sent, with the most insulting and offensive exposition of the reasons for this act, and several journals friendly to the present government followed in the same spirit. When we take into view the existing difference between the two governments about enlistments, and the still more dangerous questions behind, concerning Central America—all of which are well known to the people of the United States—what will be the inference naturally drawn by them when the news shall first burst upon them? Will it not be that this fleet has reference to these questions, and is intended as a menace? I need not say what will be the effect on my countrymen. They well know that no reason ever existed in point of fact for apprehension on account of Russian privateers, and still less, if that be possible, for an expedition to Ireland; and they will not attribute the sending of the fleet to these causes. The President, in his message to Congress early in December, will doubtless present to that body the present unsatisfactory condition of the Central American questions; and it will require the cool and clear heads of the public men of both countries to prevent serious consequences from these questions. Now, it so happens that the news of the sending of the British fleet will arrive in the United States but a short time before the date of the message, and will almost necessarily be connected in public opinion with these dangerous questions, thus rendering them more complicated. If you will at the present moment, and before we can hear from the United States, voluntarily withdraw your fleet upon the principle that the danger from Russian privateers, of which you had been informed, did not in point of fact exist, and at the same time do justice to the government of the United States for having so faithfully preserved its neutrality, this would be to pour oil upon the troubled waters, and could not fail to produce the best results. You might address a note either to Mr. Crampton or myself, stating that the fleet had been withdrawn; and I am persuaded that this act of justice would have a most happy effect."

His lordship, in reply, said, in substance, (for I will not undertake to repeat his very words,) that he thanked me for my suggestion, and would take it into serious consideration; but, of course, he could do nothing without consulting the cabinet. Of this, however, he could assure me most positively, as he had done at our former interview, that nothing could be further from their intention than any, even the most remote, idea of a menace in sending out the fleet. Immediately after our conversation on Thursday last, he had sent to the Admiralty and requested that orders might be issued that the vessels sent out should not go near the coasts of the United States. Sir Charles Wood and Admiral Berkeley had both informed him that it was never their intention that they should approach our coasts, and he could assure me that none of these vessels would ever go "poking" about our ports. Besides, he said, Sir Charles Wood had informed him that but three vessels had been sent out—one to Bermuda, and the other two to Jamaica. [I observed this was a mistake, but I would not interrupt him.] He replied, this was the information he had received from Sir Charles.

Lord Clarendon to Mr. Crampton.

[No. 272.] FOREIGN OFFICE,
November 16, 1855.

SIR: In my despatch to you, No. 250, of the 2d instant, I enclosed the copy of a despatch from Mr. Marcy, which had been read to me, and placed in my hands by Mr. Buchanan.

Before I proceed to offer any remarks upon this despatch, it will be proper to state that when it was read to me by Mr. Buchanan I had no cognizance of Mr. Marcy's despatch of the 15th of July to which it alludes, and of which a copy was also transmitted to you; and upon my observing this to Mr. Buchanan, he said he had not thought it necessary to communicate it to me, as, before it had reached him, he had received my note of the 16th of July, which he thought would finally settle the question that had arisen between the two governments.

Her Majesty's government shared the opinion of Mr. Buchanan. They did not doubt that the frank expression of their regret for any violation of the United States law, which, contrary to their instructions, might have taken place, and of their determination to remove all cause for further complaint by putting an end to all proceedings for enlistment, would have satisfactorily and honorably terminated a difference between two governments whose duty it was to maintain the friendly relations which have hitherto, and to their great reciprocal advantage, happily subsisted between Great Britain and the United States. But as this expectation has been disappointed, and as a spirit altogether at variance with it has been manifested by the government of the United States, her Majesty's government, while they fully appreciate the friendly motives which actuated Mr. Buchanan, are now disposed to regret that he withheld the despatch of Mr. Marcy, as it would have called their attention to proceedings against which the United States government thought itself called upon to remonstrate, and which would at once have been inquired into, as her Majesty's government, in a matter which concerned the law of the United States, were scrupulously desirous that no just cause for complaint should arise.

This despatch, however, of which Mr. Buchanan has given me a copy, together with Mr. Marcy's despatch of the 13th of October, have now been considered with all the attention that is due to them; and, in conveying to you the opinion of her Majesty's government, I shall endeavor to exclude from discussion the subjects which are foreign to the question immediately at issue, and which might lead to irritation; and this course will be the more proper as her Majesty's government observe, with satisfaction, that Mr. Marcy's note of the 13th October is not framed in the tone of hostility which characterized his note of the 5th of September to you.

It appears that two distinct charges are made against the officers and agents of her Majesty's government:

First. That they have within the United States territory infringed the United States law; and secondly, that they have violated the

sovereign territorial rights of the United States by being engaged in "recruiting" for the British army within the United States territory.

Now, with respect to both these charges, I have to observe that the information possessed by her Majesty's government is imperfect, and that none of a definite character has been supplied by the despatches of Mr. Marcy, inasmuch as no individual British officer or agent is named, and no particular fact or time or place is stated; and it is therefore impossible at present to know either who is accused by Mr. Marcy, or what is the charge he makes, or what is the evidence on which he intends to rely.

Her Majesty's government have no means of knowing who are the persons really indicated by the general words "officers and agents of her Majesty's government;" whether such persons as those who [have] been under trial are the only persons meant to be charged, or, if not, who else is to be included, or what evidence against them is relied upon by the United States government.

It is true that you and her Majesty's consuls are personally charged in Mr. Marcy's note to you of the 5th of September; but neither you nor they are alluded to in Mr. Marcy's despatch of October 13 to Mr. Buchanan, which might not unreasonably have been expected, if it really be the intention of the United States government to charge you or them with being "malefactors sheltered from conviction," (to use the official language of the United States Attorney General.)

They must, therefore, request the United States government to make and establish more distinct charges, with proper specification, against particular individuals by name; and that government will, I am confident, not deny the justice and the necessity of giving each person implicated the opportunity of knowing what is alleged against himself, and of dealing with the evidence by which the charge may be supported.

I shall accordingly abstain from offering the remarks which a perusal of the evidence at the recent trials and the character and conduct of the witnesses have naturally suggested; nor will I observe upon the temper and spirit in which the officers of the United States government have throughout proceeded, and which displayed their desire rather to influence the public mind against her Majesty's government, than simply to prove the facts necessary to convict the accused parties; this tone and spirit being the more remarkable when it is remembered that the proceedings complained of had been for some time definitely abandoned, out of deference to the United States government, and that the question to be determined was the character and complexion of acts done many months previously under a state of things no longer existing.

With reference to the second charge made by Mr. Marcy—namely, that of "violating the sovereign territorial rights of the United States, by recruiting for the British army within their territories"—I have to observe, that apart from any municipal legislation in the United States on the subject of foreign enlistment, or in the entire absence of any such legislation, Great Britain, as a belligerent nation, would commit no violation of the "sovereign territorial rights of the United States" simply by enlisting as soldiers, *within British terri-*

tory, persons who might leave the United States territory in order so to enlist. The violation alleged is the recruiting *within the United States;* but to assume that there was in fact any such "recruiting," (that is, hiring or retaining by British officers,) is to beg the question.

It appears to her Majesty's government that, provided only no actual "recruiting" (that is, enlisting or hiring) takes place within the United States, British officers who, within the United States territories, might point out the routes which intending recruits should follow, or explain to them the terms upon which they would be accepted, or publish and proclaim such terms, or even defray their travelling expenses, or do similar acts, could not be justly charged with violating such sovereign territorial rights. It has been legally decided in the United States that the payment of the passage from that country of a man who desires to enlist in a foreign port does not come within the neutrality law of the United States, and that a person may go abroad, provided the enlistment be in a foreign place, not having accepted and exercised a commission.

It would, indeed, be a violation of territorial rights to enlist, and organize, and train men as British soldiers within the United States—and whether or not this has been done by British authority is the question involved in the first of Mr. Marcy's charges—but it is decidedly no violation of such rights to persuade or to assist men merely to leave the United States territory and to go into British territory, in order, when they arrive there, either to be voluntarily enlisted in British service or *not, at their own discretion.* There can be no question that the men who went to Halifax were free, and not compelled to be soldiers on their arrival. Upwards of one hundred Irishmen in one body, for instance, if her Majesty's government are rightly informed, refused to enlist on arriving there, and said they came in order to work on a railway. They were, therefore, not enlisted, hired, or retained as soldiers in the United States: no attempt was made to enforce against them any such contract or engagement.

Mr. Marcy cites no authority for the position he has assumed in relation to this particular doctrine of the effect of foreign enlistment on sovereign territorial rights; but the practice of nations has been very generally adverse to the doctrine, as proved by the numerous instances in which foreign troops have been, and still are, raised and employed.

It cannot therefore be said that Mr. Marcy's doctrine is in accordance with the general practice of nations; and high authority might be quoted directly adverse to any such doctrine as applicable to free countries—"*ubi civitas non carcer est.*" But even admitting the alleged doctrine as to the bearing of the principle of territorial sovereignty, its application must obviously be subject to many limitations in practice.

Her Majesty had (for instance) internationally an unquestionable right to recall to her standard displayed upon her own territory those of her own subjects capable of bearing arms who might be transiently or temporarily resident in a foreign country, and her Majesty would not thereby incur any risk of violating the "territorial sovereignty" of such country. Again: in the case of political refugees driven

from their own country, an essentially migratory class, owing a merely local and qualified allegiance to the United States, is it to be contended that to induce such persons by any fair means short of "hiring" or enlisting them to leave the United States in order to enrol themselves on British territory as volunteers in a war in which many of them feel the strongest and most natural desire to engage, is to violate the territorial sovereignty of the United States?

It is, of course, competent to any nation to enact a municipal law, such as actually exists in many countries, forbidding its subjects to leave its territory, but in such cases "*civitas carcer est;*" and it may be the duty of other countries to abstain from actively assisting the captives to escape from the national prison in order to serve another master; but the government of the United States has enacted no such law—it justly boasts of its complete freedom in this respect, "*civitas non carcer est;*" all residents therein, whether foreigners or citizens, are perfectly free to leave its territory without the permission of the government, at their own absolute discretion, and to enter the service of any other State when once within its frontier. To invite them or persuade them to do what is thus lawful can constitute no violation of the territorial rights, which the sovereign power has never claimed or exercised.

It is moreover to be observed that in this case no United States citizens, as far as her Majesty's government are aware, were engaged; both those actually enlisted within the British North American provinces and those expected were, to the best of our belief, exclusively foreigners, and not citizens of the United States.

Without entering further into the discussion of this peculiar doctrine, I will only remark that, at all events, it was not proclaimed or insisted upon by the United States, either at the commencement of the war, or when the desire of her Majesty's government to raise a foreign legion was first published, or when a recruiting station was first opened at Halifax.

The United States, therefore, although always and most properly insisting on their right and intention to punish violations of their municipal law, took no step to proclaim or vindicate the particular doctrine now set forth until a very late period of the discussion, and after the time for giving effect to it had gone by. The charge of "violation of sovereign territorial rights" cannot, therefore, in the opinion of her Majesty's government, be fairly urged as a separate and different charge from that of violation of the municipal law of the United States. But the municipal law was certainly not violated by the orders, nor, as far as they believe, by the officers of her Majesty's government: and her Majesty's government and her Majesty's minister at Washington gave reiterated orders to all concerned carefully to abstain from such violation; and if the British government did not purposely cause the United States law to be violated, then the territorial rights of the United States, whatever they may be, were not, as has been said, intentionally violated by Great Britain "as a nation," even if it should be shown that the municipal law of the Union was infringed.

Before I conclude this despatch it may be useful to place on record

certain facts connected with the question of recruiting in North America, the correctness of which will, I doubt not, be admitted by Mr. Marcy; and I will observe—

First: That the United States government were from the first perfectly well aware that her Majesty's government were in want of recruits and were desirous of raising a foreign legion.

Secondly: That preparations were making to receive recruits in a British North American colony for such a legion.

Thirdly: That her Majesty's government expected to receive recruits there for such a legion from the United States, although, whilst so doing, they were anxious not to violate the United States law.

Fourthly: That many British subjects and foreigners in the United States were *bona fide* "volunteers," desirous, from various but natural and powerful motives, to enlist. Numerous offers to raise men within the United States were made, but were consistently and honorably refused by her Majesty's ministers and consuls, in order to avoid violating the United States law.

Fifthly: That Mr. Marcy was in confidential communication with you on the subject for months, without ever, that I am aware of, warning you against attempting anything of the kind, or stating that the United States would resist or resent it, apart from any question of municipal law; thus, in effect, acquiescing, and only insisting that the United States law should be respected.

Sixthly: That as soon as it became apparent that the United States government was adverse to the scheme, and that it might lead to violations of the United States law, the whole project was abandoned out of deference to the United States; but this conclusive proof of the good faith and good will of her Majesty's government has not been noticed or appreciated by the government of the United States.

Seventhly: That the whole question in dispute now turns, *not* on what is doing, or shall or may be done, by her Majesty's government, but on what *was* done many months ago, under a system which is not continuing nor about to be revived, and which has been voluntarily and definitively abandoned, in order to satisfy the United States, and to prevent the occurrence of any just ground for complaint.

The foregoing facts and considerations, which demonstrate that no offence to the United States was offered or contemplated by her Majesty's government, may, perhaps, have weight with Mr. Marcy, if the matter at issue is to be settled in a manner becoming the governments of Great Britain and the United States, and with a deep sense of the responsibility which weighs on them to maintain uninterrupted and unshaken the relations of friendship which now exist between the two countries; and her Majesty's government, fully reciprocating the feelings of the United States government, expressed in Mr. Marcy's despatch, with regard to the many ties and sympathies which connect together the people of the two countries, do not permit themselves to doubt that such further discussions as may take place on this question will be conducted in a spirit of conciliation.

It only remains for me to state that no enlistment in the British service is valid without attestation; and that, according to British laws, a recruit cannot be attested in a foreign country, nor even in

the British colonies, without a specially delegated authority for that purpose. No binding contract could therefore be made with any man within the United States. Promises might be so made, but any money given to men to enable them to repair to places beyond the United States territory for the purpose of being enlisted would be advanced at a risk. Nevertheless, if it can be shown that there are persons now in the foreign legion who have been enlisted or hired in violation of the United States law as well as of the British law, her Majesty's government will be prepared to offer them their discharge, and to give them a free passage back to the United States if they choose to return thither.

You are instructed to read and give a copy of this despatch to Mr. Marcy.

I am, &c.,

CLARENDON.

JOHN F. CRAMPTON, Esq., *&c.*, *&c.*, *&c.*

Mr. Marcy to Mr. Buchanan.

[No. 130.] DEPARTMENT OF STATE,
Washington, December 28, 1855.

SIR: I have received from Mr. Crampton, her Britannic Majesty's envoy extraordinary and minister plenipotentiary to this government, a despatch addressed to him by the Earl of Clarendon, her Majesty's Principal Secretary of State for Foreign Affairs, in reply to my despatch to you of the 13th of October.

This document has been carefully considered by the President, and I am directed to present to you his views thereon, for the purpose of having them laid before her Majesty's government.

It is perceived with deep regret that there exists a very wide difference of opinion between this government and that of Great Britain in regard to the principles of law involved in the pending discussion, and a still wider difference, if possible, as to the material facts of the case.

It is due alike to the serious importance of the question under consideration, and to the sincere respect entertained for the elevated character and position of Lord Clarendon, that opinions and views so much in conflict with his should be not merely announced, but sustained.

To do this I shall be obliged to occupy much space, and notice several delicate topics; but, in performing this unavoidable duty, I shall refrain, as far as practicable, from any allusion to subjects which may lead to irritation; and I hope to remove the impression from Lord Clarendon's mind that my previous despatches have manifested a "tone of hostility," and have been framed in a spirit incompatible with the duty, which I feel as sensibly as he can, of maintaining friendly relations between the two countries.

I am quite certain that Lord Clarendon is not aware of the serious importance which the United States attach to the question under dis-

cussion; otherwise, he would not have so harshly characterized the conduct of the United States officers on whom the duty to suppress recruiting for the British service was devolved; nor would he have so freely arraigned the motives of this government for requiring some satisfaction for what it regards as a great national wrong.

The variant views of the British government in relation to recruiting for its armies within the United States render the precise position it intends to maintain somewhat uncertain.

To present the different aspects in which the two governments view the case, and to show the reasons for dissenting from some of the statements and the main conclusions contained in Lord Clarendon's despatch of the 16th of November, a recurrence to the prominent points appears to be indispensable.

The claim put forth in that despatch, of the right of a foreign belligerent power to resort to the territories of a neutral State to recruit its armies, and for that purpose to employ such means as he justifies, raises one of the gravest international questions which can come under consideration. If that right be conceded, then any foreign power can justifiably resort to measures for recruiting its armies within the jurisdiction of this country almost coextensive with those which can be employed by this government.

Before adverting to the conduct of the officers and agents of her Majesty's government in recruiting within the territories of the United States, it will be necessary, not only to define our own rights, but to ascertain the precise limits of British pretensions.

After the debatable ground shall be clearly ascertained, the range of discussion will, it is hoped, be reduced to narrower limits, and the probability of an amicable adjustment of the present difficulties increased.

When the Parliament of Great Britain authorized foreign enlistments, there was no apprehension here that the United States would be resorted to for that purpose. This government had what was regarded as the assurance of her Majesty's government that enlistments in this country would not be attempted by British authority unless notice was given and its consent obtained.

While the bill for foreign enlistments was under consideration in Parliament, her Majesty's ministers were warned against resorting to a measure which would be dangerous to peaceful relations with other powers.

When the Duke of Newcastle, her Majesty's Secretary of War, and a member of the cabinet, introduced that bill into the House of Lords, he was asked to state from what country the foreign legion was to be obtained, and he replied that the question could not be answered until communications were had with foreign governments. No such communication has ever been made to this government; but, on the contrary, much was done here, after the plan of recruitment was in full operation, to allay the suspicion that the British government was in anywise connected with it.

After her Majesty's ministers came to the determination to raise recruits within the United States, it is much to be regretted that their purpose, together with the instructions to their agents, was not made

known to this government. There is some vague language used in the last despatch of Lord Clarendon, which seems to imply that this had been done; but it is not positively asserted, nor could it be. The first intimation which reached this government that recruiting within the United States had the sanction of British authority was derived from the proceedings which had taken place in executing the plan of enlistment. The first step taken by the British government, or any of its officers, in communicating with that of the United States on the subject, was one which implied an assurance that the British government not only had no connexion with, but actually discountenanced, the scheme of recruiting for the British army, although it subsequently appeared that the proceedings were supervised by British officers, and conducted by their agents. This assurance was derived from a letter dated the 22d of March, addressed by Mr. Crampton to the British consul at New York, and about that time read to me. I shall have occasion hereafter to bring that letter under particular consideration.

Without any notification from the British government of such an intention, it would have been extremely illiberal to indulge a suspicion that her Majesty's ministers or officers had been so unmindful of what was due to courtesy as to authorize, or even countenance, the unfriendly procedure of sending agents into the United States to raise recruits for the British army. The offenders against the laws of the United States were therefore treated as individuals unconnected with the British government, and unsustained by its authority or means; but the judicial proceedings against them soon disclosed facts which established a complicity of her Majesty's officers in the British provinces in this scheme of recruiting within the United States.

The next step in the progress of events was the delivery in May, at the Department of State, of a copy of a despatch from Lord Clarendon to Mr. Crampton, dated the 12th of April last, relating to that subject. This paper demands special attention. It conveyed the first distinct intimation that her Majesty's ministers had given instructions for enlistments in the United States, together with the fact that to the British minister, Mr. Crampton, had been assigned some duty in that service. Lord Clarendon says to Mr. Crampton in that despatch: "I entirely approve of your proceedings, as reported in your despatch No. 57, of the 12th ult., with respect to the proposed enlistment, in the Queen's service, of foreigners and British subjects in the United States." Thus it was brought to light that the British cabinet had proposed enlistments in the United States, and had employed her Majesty's envoy extraordinary and minister plenipotentiary accredited to this government to aid in the undertaking. When this despatch was received at this department, Mr. Crampton was in the British provinces. It had direct reference to the enlistment, for the Queen's service, of foreigners and British subjects in the United States. The object to be accomplished was against law; and it is difficult to conceive what one step Mr. Crampton could have taken in furtherance of it without putting at defiance an act of Congress which prohibits, in explicit terms and under heavy penalties, such a proceeding.

Being satisfied that the government of Great Britain reciprocated our friendly sentiments, and that it would not deliberately and designedly authorize proceedings within the jurisdiction of the United States in contravention of their laws, this government was disposed to believe that there had been some strange misapprehension on the subject by her Majesty's cabinet, and that the inadvertent misstep would be retraced as soon as it was perceived, with such explanations to this government as the circumstances of the case seemed to require.

The closing part of the despatch alluded to was interpreted as indicating a consciousness that the British ministers, in authorizing enlistments in the United States, had acted at first in utter ignorance of the laws of this country; for Lord Clarendon says, "the law of the United States with respect to enlistments, however conducted, is not only very just but very stringent, according to the report which is enclosed in your [Mr. Crampton's] despatch, and her Majesty's government would on no account run any risk of infringing this law of the United States." But, as that risk would be inevitably run if the design should be pursued, it was expected that the original scheme of recruiting within the United States would be promptly and wholly abandoned.

After the lapse of some time, this government discovered that it had looked with a mistaken confidence to a result so much desired. Throughout the months of April, May, and June, the business of recruitment proceeded upon a wider field, and with increased vigor; it was extended to regions which it had not hitherto reached; the efforts of our magistrates and tribunals scarcely checked, but could not arrest it; and proofs were daily brought out which show that the recruiting business derived vitality and energy from the countenance and means afforded by her Majesty's officers resident in the United States and in the adjoining British provinces.

To arrest the evil, an appeal to the British government, unpleasant as such a step was, became necessary, and in the early part of June you were directed by the President to present the case to the notice of the Earl of Clarendon. In your note to Lord Clarendon of the 6th of July the case is clearly and ably laid before his lordship, and he is assured that this government had reason to believe, and did believe, that British officers were engaged in carrying out a scheme of recruiting for the British army within the United States in contravention of their laws and sovereign rights; and you were instructed to ascertain from the British government how far these officers had acted with or without its approbation, and what measures, if any, had been taken to restrain their unjustifiable conduct. Lord Clarendon was assured that the President would be gratified to learn that her Majesty's government had not authorized the proceedings complained of; that it had condemned the conduct of its officials engaged therein; had visited them with its marked displeasure, and taken measures to arrest the proceedings complained of.

The reply to this note deserves particular notice on several accounts, but especially for the difference between it and the despatch of the 16th of November, now under consideration.

In the note of the 16th of July Lord Clarendon seems to admit that the restraining effect of the law of the United States in regard to recruiting is such as this government asserts it to be; but, by his exposition of that law in his despatch of the 16th of November, it is bereft of the very stringent character he had before ascribed to it, and it is now so construed by him as to afford justification for such acts as, in his former note, he conceded to be illegal.

In the note to you of July, the British government only claimed the right to make generally known to British subjects and foreigners in the United States, who wished to enter her Majesty's service and take part in the war, its desire to accept these volunteers, and to receive such as should present themselves at an appointed place in one of the British provinces.

That Lord Clarendon intended, in his note of the 16th July, to exclude all pretension to a right to publish handbills offering inducements, and to send agents into the United States for recruiting purposes, is shown by the following passage: "It can scarcely be matter of surprise that, when it became known that her Majesty's government was prepared to accept these voluntary offers, many persons, in various quarters, should give themselves out as agents employed by the British government, in the hope of earning reward by promoting, though on their own responsibility, an object which they were aware was favorably looked upon by the British government. Her Majesty's government do not deny that the acts and advertisements of these self-constituted and unauthorized agents were, in many instances, undoubtedly violations of the laws of the United States; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed."

These positions taken by the Earl of Clarendon brought the matter to a definite point. This government took issue upon his allegation that the persons engaged in recruiting in the United States were self-constituted, unauthorized agents, whose acts had been disavowed; and it maintained, on the contrary, that the persons performing them were authorized agents, and had embarked in that service in consequence of inducements, stronger than the mere hope of uncertain reward, held out to them by British officers; that they were promised commissions in the British army, and some of them were actually received and treated as fellow officers, and as such were paid for their services, received instructions from her Majesty's servants for the guidance of their conduct while within the United States, and were furnished in the same way with abundant funds for carrying on their recruiting operations in this country. The persons engaged in the United States in recruiting were, in fact, the agents and instruments of eminent British functionaries resident here and in the neighboring British provinces. The numerous judicial investigations and trials have brought out a mass of testimony too strong to be resisted, implicating these functionaries and sustaining the foregoing allegations.

When this state of the case was presented to Lord Clarendon, with the designation by name of some of the higher British officers, with

the assurance by the President that the information he possessed did not allow him to doubt their participation in the offence against the laws and sovereign rights of the United States, his lordship did not then call for the evidence, as he has since done, but disposed of it by the general declaration "that even the extraordinary measures which have been adopted in various parts of the Union to obtain evidence against her Majesty's servants, or their agents, by practices sometimes resorted to under despotic institutions, but which are disdained by all free and enlightened governments, will fail to establish any well-founded charge against her Majesty's servants."

It is presumed that his lordship's misapprehension as to the character of the evidence, and the means by which it was obtained, has been since corrected; because, in his last note he not only calls for the names of the British officers implicated, (though some of them had been before given,) and the specific charges against them, but for a particular statement of the evidence by which these charges are sustained, professing to have very imperfect information in regard to the matters complained of, although full four months had passed since his attention was first called to them by this government.

The exposition he has given to the statute of the United States against recruiting, and the restrictions he has placed upon our sovereign rights, show that his views on that subject have been greatly modified since his first despatch was written.

As that law is now construed by him, scarcely any evidence, however obtained, or whatever be its character, will be sufficient to implicate any one in the offence of recruiting within the United States.

If the views of Lord Clarendon as to that law and the sovereign rights of the United States can be maintained, the territories of this country are open, almost without restriction, to the recruiting operations of all nations, and for that purpose any foreign power may sustain a vigorous competition with this government upon its own soil.

This government does not contest Lord Clarendon's two propositions in respect to the sovereign rights of the United States—first, that, in the absence of municipal law, Great Britain may enlist, hire, or engage, as soldiers, within the British territory, persons who have left the United States for that purpose; (this proposition is, however, to be understood as not applying to persons who have been enticed away from this country by tempting offers of reward, such as commissions in the British army, high wages, liberal bounties, pensions, and portions of the royal domain, urged on them while within the United States, by the officers and agents of her Majesty's government;) and secondly, no foreign power has a right to "enlist and organize and train men as British soldiers within the United States." The right to do this Lord Clarendon does not claim for his government; and whether the British officers have done so or not is, as he appears to understand the case, the only question at issue, so far as international rights are involved, between the two countries.

In his view of the question as to the rights of territory, irrespective of municipal law, Lord Clarendon is understood to maintain that her Majesty's government may authorize agents to do anything within the United States, short of enlisting, and organizing, and training

men as soldiers for the British army, with perfect respect to the sovereign rights of this country.

This proposition is exactly the reverse of that maintained by this government, which holds that no foreign power whatever has the right to do either of the specified acts without its consent. No foreign power can, by its agents or officers, lawfully enter the territory of another to enlist soldiers for its services, or organize or train them therein, or even entice persons away in order to be enlisted, without express permission.

This, as a rule of international law, was considered so well settled that it was not deemed necessary to invoke the authority of publicists to support it. I am not aware that any modern writer on international law has questioned its soundness. As this important principle is controverted by Lord Clarendon, and as its maintenance is fatal to his defence of British recruiting here, I propose to establish it by a reference to a few elementary writers of eminence upon the law of nations:

"Since a right of raising soldiers is a right of majesty which cannot be violated by a foreign nation, it is not permitted to raise soldiers on the territory of another without the consent of its sovereign."—*Wolfius.*

Vattel says, that "the man who undertakes to enlist soldiers in a foreign country without the sovereign's permission, and, in general, whoever entices away the subjects of another State, violates one of the most sacred rights of the prince and the nation." He designates the crime by harsher names than I choose to use, which, as he says, "is punished with the utmost severity in every well regulated State." Vattel further observes, that "it is not presumed that their sovereign has ordered them [foreign recruiters] to commit a crime; and supposing, even, that they had received such an order, they ought not to have obeyed it; their sovereign having no right to command what is contrary to the law of nature."

Hautefeuille, a modern French author of much repute, regards permission (and acquiescence implies permission) by a neutral power to one belligerent, though extended to both, to raise recruits in its territories, unless it was allowed in peace, to be an act of bad faith, which compromits its neutrality.

There can be no well founded distinction, in the rule of international law, between raising soldiers for a belligerent's army and sailors for its navy within a neutral country. Hautefeuille says, "the neutral sovereign is under obligation to prohibit and prevent all levying of sailors upon its territory for the service of the belligerents." Again he says, "the neutral must prohibit, in an absolute manner, the levying of sailors upon its territory to complete a ship's company reduced by combat, or any other cause."

"The prohibitions to engage sailors on the territory of a pacific prince must extend to foreigners who are found in the ports of his jurisdiction, and even to those who belong to the belligerent nation owning the vessel that wishes to complete its crew, or ship's company."

Reference to other writers might be made to sustain the position contended for by this government, and to overthrow that advanced by Lord Clarendon, but the authority of those presented is deemed sufficient for that purpose.

This view of the law on the subject was presented to Parliament when the foreign-enlistment bill was under debate. On that occasion Lord Stanley said that the object proposed by it was "to resort to a practice which, for the last hundred years, the opinion of European statesmen had not hesitated to condemn."

This is the doctrine on the subject of recruiting soldiers and sailors by belligerents on neutral soil, which this government maintains, and insists upon applying to the present case.

There is another view of territorial rights which Lord Clarendon has not distinctly brought out, but which has a direct bearing upon the question under consideration. The extent of a nation's sovereign rights depends, in some measure, upon its municipal laws. Other powers are bound, not only to abstain from violating such laws, but to respect the policy of them. The British officers who set in operation the scheme for recruiting in this country, which resulted in numerous acts against its law, being beyond its jurisdiction, did not, by such a proceeding, expose themselves to the penalties denounced by that law; but they violated its policy, and their acts, if done in obedience to the orders of their government, or in carrying out its purposes, involved that government in responsibility for their conduct. It is the sovereign right of every independent State, that all foreign powers shall abstain from authorizing or instigating their officers or agents to do that, even within their own dominions, which would, as a natural or very probable consequence, lead to the contravention of the municipal laws of such State. Some of the proceedings by British officers and agents, in regard to recruiting within the United States, though conducted beyond the limits thereof, were considered by this government an infringement of their sovereign rights, and constituted one ground of remonstrance to her Majesty's government.

But Lord Clarendon's exposition of the municipal law of the United States, in respect to recruiting therein, has created much more surprise than the restrictions he has laid on the sovereign rights of this country.

If I do not misconceive his meaning, Lord Clarendon's interpretation nearly annuls the clause in the act of Congress which prohibits enlisting within the United States for foreign service, and thus leaves to British officers and agents full liberty to do almost anything for that purpose.

He says "that no enlistment in the British service is valid without attestation, and that, according to British laws, a recruit cannot be attested in a foreign country, nor even in the British colonies, without a specially-delegated authority for that purpose."

The other provisions of the law, which forbid hiring or retaining persons within the United States to go beyond the limits thereof, for the purpose of enlisting in foreign service, are reduced to the same imbecility by a similar course of reasoning. Lord Clarendon says:

"No binding contract could, therefore, be made with any man within the United States—promises might be so made; but any money given to men to enable them to repair to places beyond the United States territory for the purpose of being enlisted, would be advanced at a risk."

In order to prevent misconception as to Lord Clarendon's views on this subject, and to show that the inferences here deduced from them are correct, I add another extract from his despatch of the 16th of November:

"There can be no question that the men who went to Halifax were free, and not compelled to be soldiers on their arrival. Upwards of one hundred Irishmen in one body, for instance, if her Majesty's government are rightly informed, refused to enlist on arriving there, and said they came in order to work on a railway. They were therefore not enlisted, hired, or retained, as soldiers in the United States: no attempt was made to enforce against them any such contract or engagement."

Lord Clarendon, it is true, uses language in other parts of that despatch which seems to admit that enlisting into foreign military service within the United States, or hiring or retaining persons to leave the United States to enlist into such service, would be a violation of the United States neutrality law; but this admission amounts to nothing, when taken in connexion with his definition of the terms enlisting, hiring, or retaining. In his view, as I understand it, each act must be the result of a valid contract. If the persons are not bound, when they have left the United States, to perfect their enlistment, then there has been no violation of the United States law. Such a contract made in the United States, being expressly prohibited by law, would, of course, be void. I think this conclusion is fairly deduced from Lord Clarendon's language, or rather, is his own conclusion, stated by him in a different manner.

This government cannot concur in these views. They deprive the law of the United States of all stringency, and render it a dead letter. The earlier opinion of Lord Clarendon in regard to that law is the one which this government strenuously maintains.

In his despatch of the 12th of April, to which I have already referred, he admits "that the law of the United States with respect to enlistment, however conducted, is not only very just, but very stringent;" but, as I understand his latter opinion, the law imposed very little restraint upon the British officers and agents who embarked in the scheme of recruiting in this country; it left them with all the liberty they had occasion to use for their purpose; they could penetrate every part of the country; open rendezvous in any city; publish handbills, ornamented with the emblem of England's royalty, presenting every inducement for enlisting which a United States officer engaged in recruiting troops for his own government could offer; and yet, in doing all these things, they would comply with the stringent instructions—so often repeated to them, and now so much relied on for their justification—not to violate the United States law of neutrality.

Under the construction given by her Majesty's government to that

law, the injunction not to violate it could have had very little significance, and is not admitted by this government as an available excuse for what was done by her Majesty's officers and agents.

After the most deliberate and respectful consideration of Lord Clarendon's views, in his despatch of the 16th of November, as to the sovereign rights of the United States, the effect of their neutrality law, and the conduct of the British officers and agents in carrying out the scheme of recruiting, this government is constrained to differ most widely from them all.

It cannot but regard the original design, which had the sanction of the British cabinet, as a dangerous measure, which should not have been adventured on without the consent of this government. The scheme for carrying out that design, which, it is presumed, was devised in the United States or the British provinces, was framed in an utter disregard of the act of Congress, and almost every step in the progress of executing it was attended by the transgression of that law.

The reasons offered by Lord Clarendon for not having acted, on the complaint of this government, against the British officers who were engaged in recruiting within the United States, and the precedent condition to be performed before that complaint will be attended to, deserve particular consideration. Lord Clarendon says "they (her Majesty's ministers) must, therefore, request the United States government to make and establish more distinct charges, with proper specifications against particular individuals by name; and that government will, I am confident, not deny the justice and the necessity of giving each person implicated the opportunity of knowing what is alleged against himself, and of dealing with the evidence by which the charge may be supported."

In your note to Lord Clarendon of the 6th of July, the charges, as well as the designation of persons, were less distinctly presented than in the despatches subsequently laid before her Majesty's government; yet in Lord Clarendon's reply to that note he did not object to the charges for being indefinite, or to the designation of the persons implicated for uncertainty. He did not deny that the United States law had been violated, but insisted that it had been done by self-constituted and unauthorized persons, for whose acts British officers were not responsible.

In my despatch of the 5th of September, addressed to Mr. Crampton, the charges were repeated with more distinctness, and Mr. Crampton himself and Sir Gaspard le Marchant were both named.

Lord Clarendon appears to have understood that her Majesty's consuls in some of the cities of the Union were included in the charge against British officers resident within the United States. Nothing was said in Lord Clarendon's reply to my despatch of the 5th September, concerning his imperfect information on the subject, or his uncertainty as to the persons complained of; nor did he then call for the evidence by which the participation of the British officials in the infraction of the law of the United States was to be established; but he set aside the whole of the evidence by the sweeping allegation, that the practices resorted to for obtaining it rendered it incompetent "to establish any well-founded charge against her Majesty's servants."

The ground taken in July—that the persons engaged in recruiting, who had violated the law of the United States, were self-constituted and unauthorized agents—is abandoned in his despatch of November. In the latter it is not denied that these persons have acted under the authority of the British government; but her Majesty's ministers now propose to give their attention to the demand of this government for redress, if it will make and establish more distinct charges, with proper specifications, against particular individuals by name. Quite as much, and, indeed, more than is usual, has been done in this case in specifying charges and indicating the persons implicated. The despatches from this government in the possession of the British ministers made such disclosures as to the infringement of the law and rights of the United States, and as to the British officers and agents concerned therein, as called for a full investigation of the subject by her Majesty's government. Such an investigation on its part was, in the opinion of the United States, due to the friendly relations of the two countries, and would have been in strict conformity to established usage; but that government has remained apparently inactive, and is, it seems, disposed so to remain until the American Secretary of State shall name the individual persons accused, describe the particular acts performed by each, with specification of time, place, and the evidence relied on to sustain the charges; until the proceedings shall assume, as it were, the form, and be conducted by the legal rules, of a criminal trial, in which the government of the United States is to present itself as the prosecutor and the accused as the defendants.

It is believed that such a course is unprecedented in diplomacy, and is a dangerous departure from that hitherto pursued in similar cases. If generally adopted, it would introduce a new element of discord into international intercourse, which could not fail to disturb the peace of nations, and would inevitably lead to a protracted controversy, engendering at each step in its progress hostile feeling between the parties.

Though the example of this government may not be much regarded, I will refer to an instance of a recent date, in a matter of less grave importance, but of similar character to that under discussion, as illustrating the course which, in the opinion of this government, should have been pursued in this case. Not long since her Majesty's minister, Mr. Crampton, represented to this government that the barque Maury was being fitted out in the port of New York as a privateer to depredate upon the commerce of the allies. The evidence, if it could be called such, to support the charge, consisted of affidavits detailing loose rumors, and some circumstances about her equipment which justified a bare suspicion of an illegal purpose. If there could be a case which would warrant the course suggested by her Majesty's ministers in respect to the complaint of this government against British recruitments within the United States, it would be that of the barque Maury; but the President, without the slightest hesitation or delay, ordered proceedings to be instituted against that vessel and against all persons who should be found to be implicated. All the alleged causes of suspicion were immediately investigated, and the

result, which showed the utter groundlessness of the charges, was promptly communicated to her Majesty's government.

If this government, acting upon the rule now prescribed in the case of British recruitments in this country, had replied to that of Great Britain, on the complaint against the barque Maury, that inasmuch as Mr. Crampton had not made any definite charge; had not named the persons accused, with a precise statement of their acts or when and where done, or produced the evidence on which he intended to rely to support his allegations, so that the persons concerned might have an opportunity to deal with it, nothing would be done, no step would be taken, until these preliminary matters should have been attended to: would such a reply in the case of the Maury have been what her Majesty's ministers might have expected; would it have been deemed courteous or friendly to the British government?

Lord Clarendon may be well assured that such a reply, in the case of the Maury, would have been quite as satisfactory to her Majesty's government as is his reply to this government in relation to its remonstrances and complaint against British recruitments within the United States.

Until this government was apprized by Lord Clarendon's despatch of the 16th of November of the position adverted to in regard to its complaint with reference to that proceeding, it indulged a confident expectation that her Majesty's ministers would take the usual course in such cases. The grounds of the complaint were fully disclosed; the offence clearly stated; some of the British officers named, and others, with more than usual precision, indicated. Sufficient information was given to direct their inquiries, but her Majesty's government has refused to do more than offer to pass on the issues which may be made between this government and those officers, after the pleadings and proofs are laid before them, as prescribed in Lord Clarendon's despatch.

For most controlling reasons, which, on reflection, will readily occur to Lord Clarendon, this process of litigating the case is declined.

So far as respects the British officers and agents, whose acts in carrying out the project of recruiting in disregard of law were performed beyond the limits of the United States; and, also, those persons who acted within those limits, but have since left the country, nothing further remains to be done. This result is deeply regretted: the sense of wrong which led this government most reluctantly to present their conduct to the consideration of her Majesty's government, as a violation of the law and rights of the United States, survives the hope of redress.

Before I present the President's views in respect to other British functionaries who are implicated, and who now hold official positions here by the consent of the Executive, it seems to be proper that other parts of the despatch of the 16th of November should be particularly noticed.

In that despatch Lord Clarendon has subjected to unfair suspicion the purpose of this government in seeking redress, and insisting upon it after the proceedings complained of have ceased, and, as he alleges, by the interposition of the British government.

The circumstances which led to the abandonment of the recruiting scheme will be adverted to hereafter.

This act is regarded by her Majesty's government as a favor for which the United States are not sufficiently grateful. If it be a favor, then the recruiting, carried on as it was by British authority in the United States, was the exercise of a right. The application was made to her Majesty's government to discontinue recruiting by its officers because it was a national offence. This government cannot receive the mere suspension of wrong-doing, even if unintentional, as a favor, and consequently does not consider Lord Clarendon's reflection upon it for not so receiving it as at all deserved. As the proceedings for raising recruits for the British service in this country resulted from instructions to her Majesty's officers here and in the British provinces, issued by the ministers of the crown for that express purpose, the order to discontinue them is regarded as a mere act of justice, but in no respect a satisfaction for a past injury.

This government asked, as a part of the satisfaction due to it from Great Britain, that the men who had been enticed, contrary to law, from the United States into the British provinces, and there enlisted into her Majesty's service, should be discharged. A casual reading of Lord Clarendon's despatch of the 16th of November may convey an impression that this demand has been acceded to; but such is not its true import. The language of that despatch is as follows: "If it can be shown that there are persons now in the foreign legion who have been enlisted, or hired, in violation of the United States law, as well as of British law, her Majesty's government will be prepared to offer them their discharge." The offer is not to discharge them if it be shown that they were enlisted or hired in violation of the law of the United States. That fact would be of no avail, unless it were shown that they were also enlisted or hired in violation of British law. This is no concession whatever to the government of the United States; for, if the men were enlisted or hired contrary to the law of Great Britain, no antecedent transaction within the United States would strengthen their just claim to be discharged. The single fact of having been enlisted or hired in violation of the United States law would not be available under this offer, unless the further fact be shown that the enlistment was also in violation of the British law.

Notwithstanding the illegal means which were used to entice or decoy them to leave the United States for the purpose of being enlisted into the British foreign legion, their subsequent enlistment in the British provinces would be valid according to the British law. Under this offer by Lord Clarendon, probably not one of the many hundred men who were induced, contrary to law, to leave the United States and to go to the British provinces, and were there enlisted, could obtain his discharge, either on his own application or on that of this government. This offer of her Majesty's minister does not, therefore, in any respect, meet the demand of this government.

Lord Clarendon has placed on record "certain facts"—seven in number—the correctness of which he says he does not doubt will be admitted by me. After duly considering them, I am constrained to say there is scarcely one of them, bearing on the merits of the case

under discussion, which I can admit without essential modifications. Some of them I shall make the subject of remark. One of these alleged facts, or rather statements, which I cannot omit to notice, is, "that as soon as it became apparent that the United States government was adverse to the scheme, and that it might lead to violations of the United States law, the project was abandoned out of deference to the United States;" and he adds an expression of regret that "this proof of good faith and good will of her Majesty's government has not been noticed or appreciated by the government of the United States."

If the fact on which Lord Clarendon relies for the proof of good faith and good will shall be shown to be essentially different from what he conceives it to be, he will understand the cause why this government does not appreciate it as he does.

In a question of this kind, dates are important. When did it become apparent that the United States government was averse to the recruiting scheme, and how soon thereafter was it abandoned?

I hope to be able to convince Lord Clarendon that they were not contemporaneous events; that far the greatest number of objectionable acts committed by the British officers was performed long after this government had, in the most public and emphatic manner, reprobated the recruiting project; after prosecutions had been pending for months against the agents of British officers, with the full knowledge of these officers, and also, as it was fair to presume, with the knowledge of their government.

Mr. Crampton's intercourse with these recruiting agents commenced in January. On the 4th of February he notified Strobel and Hertz, by a note addressed to each, that he was then able to give them precise instructions on the subject alluded to in a previous personal interview; and there can be no doubt that the subject alluded to was, recruiting within the United States. That scheme did not significantly develop itself in our principal cities until the month of March. Immediately thereupon, the United States government manifested the most decided, unequivocal, and public demonstration of averseness and resistance to it. Their attorney at New York was instructed to suppress enlistment in that city, and prosecute those engaged in it.

On the 23d of March he called upon the United States marshal for his assistance and co-operation, and addressed to that officer a letter containing a copy of the United States law against foreign recruiting within their jurisdiction, stating that "the government is determined to execute the laws to their fullest extent." In that letter he employed the following language: "I wish you to use such means as may be at your command to prevent any violations of the laws of the United States which are passed to preserve our neutrality."

On the succeeding day this letter was published in the journals of the city of New York of the widest circulation, and shortly thereafter in the "Washington Union," and throughout the country.

Numerous arrests of persons charged with enlisting men for the British service were made in March; their examinations before the magistrates were published at that time in the newspapers of the

country; their cases were laid before grand juries, and indictments found against them. Not only in New York, but at Boston, Philadelphia, and other places, the most vigorous efforts were publicly made by the federal officers, acting under instructions of the United States government, to arrest these recruitments for the British service and bring the offenders to justice. No local transaction was ever more generally known or more freely animadverted on. It provoked much excitement against the persons engaged in it; and had it then been known that they were in fact employed by officers in eminent military and civil positions in her Majesty's service, under instructions from their government, it might have been difficult to restrain public indignation within proper limits.

The landing of the "first instalment of the foreign legion," as it was called, from the United States at Halifax, was chronicled with much exuberance of joy in the Halifax Journal of the 2d of April. As that is a British journal, in the interest of her Majesty's government, and published where Sir Gaspard le Marchant, the governor of Nova Scotia, who is implicated in the scheme of recruiting, resides, and where the main depot for receiving the men thus enlisted was situated, I will make one or two extracts from its article of the 2d of April:

"The brig America arrived from Boston on Friday, with the first instalment of troops for the foreign legion, amounting to seventy; most of them are Hungarians and Germans. They were landed at the Queen's wharf, and marched up to the military hospital, followed by an immense throng of citizens, who were anxious to have a peep at them."

For the purpose of showing that the active opposition of this government to the enlistment scheme at that early day was notorious, not only through the length and breadth of this country, but in her Majesty's North American provinces, and to the British officials who had set the scheme on foot, and were superintending its execution, I direct attention to the extract from the same article in the Halifax Journal which contained the foregoing announcement of the arrival of the "first instalment" at Halifax: "Brother Jonathan," says that journal, "is making a great fuss about this foreign legion, and is using all kinds of proclamations to prevent the shipping of recruits, &c., threatening to arrest parties engaged. He is a very smart fellow, but Bluenose is sometimes too much for him. They would like to lay hands on Mr. Howe, but he is so slippery they cannot catch him."

This state of things—this public excitement—the obvious fact that vigorous measures had been taken by this government to put a stop to this scheme of recruiting for the British army, so widely known here in March, could not but have been well known in England by the middle of April; and if the recruiting project was abandoned as soon as the aversion to it by this government was manifested, it should have ceased in that month. Such, however, was not the fact. Was it abandoned in the succeeding months of May or June? Through both of these months the recruiting agents swarmed more numerously than at any previous time in various parts of the Union, and the

scheme was never prosecuted more vigorously than at that period. Mr. Crampton spent nearly all the month of May in the British provinces in forwarding that scheme, though he must have been aware as early as March of the fact that the British recruiting agents had been prosecuted by the United States.

The disclosures on the examination and trial of the offenders first brought to light the information which rendered it quite certain that British officials had instigated these recruitments; that the agents employed were engaged by them, and were plentifully supplied with means for carrying on the service.

No abatement of the efforts to execute the scheme, except what was fairly attributable to the criminal proceedings against some of the recruiters, was visible when you were directed in my despatch of the 15th of July, as you had been in that of the 9th of June, to call the attention of her Majesty's government to the subject. No knowledge of the abandonment of the scheme was received here until the 4th of August.

More than four months before it was known here that there was any intention to suspend the scheme, this government had, in the most public manner, signalized its utter repugnance to the proceedings under it; and nearly two months before any notice of such intention was received here, instructions were sent to you to remonstrate against it, and to claim satisfaction for the part which British officers had taken in the perpetration of this international offence.

I have presented this detail of facts to show the reasons why I cannot admit, as the Earl of Clarendon assumes I would, the correctness of his statement, "that as soon as it became apparent that the United States government was averse to the scheme, and that it might lead to violations of the United States law, the whole project was abandoned out of deference to the United States."

The President cannot adopt the opinion of Lord Clarendon, that the question between the two countries has shrunk into the narrow limits he has assigned to it. It is true, the scheme is at length abandoned, and this government accepts his assurance that it is not about to be revived; but the right to revive it, and to carry it out to the same extent as heretofore, is held in reserve. If nothing more is to be done, the United States are left without indemnity for the past or security for the future; and they will be understood as assenting to principles which have been once resorted to, and may be again, to lay open their territories to the incursions of the recruiting agents of any belligerent that may have occasion to augment its military force.

Another of the facts put on record by the Earl of Clarendon, which he assumes I will admit to be correct, is, "that Mr. Marcy was in confidential communication with you [Mr. Crampton] on the subject for months without ever, that I am aware of, warning you against attempting anything of the kind, or stating that the United States would resist or resent it, apart from any question of municipal law; thus, in effect, acquiescing, and only insisting that the United States law should be respected."

It gives me pleasure to say, that my intercourse with Mr. Crampton has been intimate, friendly, and perhaps it may be regarded as

having been in some degree confidential. I resisted the evidence tending to implicate him in the recruiting project until it became too powerful to be any longer withstood. Scarcely anything could have occurred more painful to me than to be obliged, by a high sense of duty, to controvert in any way, or even to qualify, a statement which it is fair to presume has had his sanction. The charge imputes to me official delinquency, but I shall notice it only on account of its direct bearing upon the merits of the case under discussion. If I gave him no warning beyond insisting upon the observance of the United States law, it was because I had not at that time any knowledge of the extent of the recruiting scheme. He had satisfied me that his government had no connexion with it, and was in no way responsible for what was doing in the United States to raise recruits for the British army. The first intimation that I had been misled in this respect reached me while Mr. Crampton was absent in the British provinces, shortly before my despatch of the 9th of June was sent to you.

It is not for me to raise the question whether Mr. Crampton has or has not complied with his instructions to have "no concealment" with me on the subject, but I am quite certain that on no occasion has he intimated to me that the British government or any of its officers was, or had been, in any way, concerned in sending agents into the United States to recruit therein, or to use any inducements for that purpose; nor did he ever notify me that he was taking, or intended to take, any part in furthering such proceedings. Such a communication, timely made, would, probably, have arrested the mischief at its commencement.

Very soon after the first development of the recruiting operations here, Mr. Crampton read to me a letter, dated the 22d of March, addressed by him to the British consul at New York, the contents of which I here insert:

"I have received your letter of the 20th instant, [March,] enclosing a printed handbill, signed Angus McDonald, and informing me that the said McDonald states to you that he has issued it by the authority of her Majesty's government

"I have to state to you, that Angus McDonald has no authority from her Majesty's government for the issue of the handbill in question, or for hiring or retaining any person in the United States to go beyond the limits of the same with intent to be enlisted in her Majesty's service.

"This would constitute an infraction of the neutrality laws of the United States, (act of Congress of 1818, section 2;) and her Majesty's government, however desirous they may be to obtain recruits for the British army, are still more anxious that the laws of the States with which her Majesty is at peace should be respected."

I regarded this act of Mr. Crampton as a disavowal by the British government, as well as by himself, of all participation in the recruiting proceedings, then just commenced within the United States. Lord Clarendon ought not to believe that Mr. Crampton was more communicative to me than he had been to his own government. As late as the 16th of July last, after the orders for abandoning the

scheme had been issued, Lord Clarendon was in utter ignorance that a single agent had ever been sent into the United States, or employed therein, for the purpose of recruiting for the British army. This is proved by the following extract from his despatch of that date:

"Her Majesty's government do not deny that the acts and advertisement of these self-constituted and unauthorized agents were in many instances undoubted violations of the law of the United States; but such persons had no authority whatever for their proceedings from any British agents, by all of whom they were promptly and unequivocally disavowed."

Lord Clarendon seems not to be aware of a fact which interrupted for at least a month, in the busiest season of recruiting, all communication whatever between Mr. Crampton and myself.

Not long after Mr. Crampton read to me his letter to Mr. Barclay, which satisfied me, at that time, that her Majesty's government had not only no connexion with the recruiting then going on in the United States, but discountenanced and condemned it, he left Washington, went to the British provinces, and did not return hither until the early part of June. He made no disclosures to me after his return in regard to the object of his visit to the provinces. What he did in furtherance of the recruiting scheme during this month's absence was but imperfectly known until about the time of Hertz's trial, and I am not indebted for this knowledge to any communication from Mr. Crampton. If the opportunity afforded by any "confidential communication" between Mr. Crampton and myself was not turned to a good account, and blame is imputable to either, it certainly does not attach to me. Mr. Crampton could not have been ignorant of what is now established beyond doubt, that a scheme for raising troops for the British service, within the United States, had been approved and adopted by her Majesty's government; that authorized agents, furnished with instructions and pecuniary means, and stimulated by the promise of commissions in the British army, and other tempting rewards, had been employed to induce persons to leave this country, and go into the British provinces, for the express purpose of entering into the British service; and that many were prevailed on to do so, had embarked for Halifax free of expense in vessels employed by British authority for that purpose, and, on arriving at Halifax, had enlisted and been enrolled in the British foreign legion.

It is with reluctance that I perform the duty of bringing into view Mr. Crampton's connexion with some of the agents who were employed in carrying out the recruitment system, and who have, in doing so, violated the law and sovereign rights of this country.

The intercourse between Mr. Crampton and Mr. Hertz, who was convicted in September last for violating the neutrality law of the United States, is established by Mr. Crampton's two letters to Hertz—one dated the 27th of January, and the other the 4th of February, 1855. The originals of both, in the handwriting of Mr. Crampton, were produced to the court at the trial of Hertz. In the latter Mr. Crampton says: "With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related."

This connexion being established, it is allowable to allude briefly to Hertz's account, verified by his oath, of what took place between himself and Mr. Crampton in relation to recruiting in this country. Nothing is known of Hertz which can affect his veracity, except the fact that he was engaged in recruiting for the British army within the United States contrary to law, and has been convicted for that offence.

Hertz says, "All that I did in procuring and sending men to Halifax for the foreign legion was done by the advice and recommendation of Mr. Crampton, Mr. Howe, and Mr. Matthew; I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation of Mr. Crampton and Mr. Matthew; Mr. Matthew knew of both the expeditions I sent; he approved and encouraged me in sending them away; he encouraged me by his advice and counsel, and in giving me money to send them away."

Mr. Max F. O. Strobel acted a more conspicuous part than Mr. Hertz, and his conduct in the affair under consideration requires to be more fully traced. In the statement here presented in regard to his proceedings and connexion with British officers, and among them with Mr. Crampton, I intend to rely almost entirely upon original documents in possession of this government. I do not mean, however, by this restriction, to cast the slightest doubt upon the credibility of Mr. Strobel.

Mr. Crampton's letter to Mr. Strobel was dated on the same day (February 4) as that addressed to Hertz, and is expressed nearly in the same terms.

After Mr. Strobel's interviews with Mr. Crampton in Washington, he embarked in the recruiting service, and suddenly rose to the rank of "captain of the first company of the foreign legion." He went with a detachment of recruits, raised in Philadelphia, to Halifax; was exultingly received into fellowship with the military and civil officers of the highest position in her Majesty's service there stationed; was invited to partake of the hospitalities of "his excellency Sir Gaspard le Marchant," of "Colonel Clark, and the officers of the seventy-sixth regiment;" and of "Colonel Fraser, Colonel Stotherd, and the officers of the royal artillery and royal engineers;" and the original cards of invitation, addressed to him, were produced on Hertz's trial.

After such an endorsement of his character, it would seem that the testimony of Captain Strobel, even if uncorroborated, should command confidence.

Mr. Strobel, who had then acquired the rank of "captain of the first company in the foreign legion," and Mr. Crampton were again brought together at Halifax, and were engaged there for some time in making further arrangements for recruiting within the United States.

Original documents, now in possession of this government, show that there can be no mistake as to the object of Mr. Crampton's visit to Halifax, and that it had special regard to recruitments in the United States for the British service.

Bruce McDonald, who appears to have been a secretary in the executive department of Nova Scotia, addressed a letter to "Captain

Strobel, first company foreign legion," dated "Provincial Secretary's office, 3d May, 1855," in these words:

"Dear Sir: I am directed by his Excellency the Lieutenant Governor to introduce to you the bearer, Lieutenant Kuntzel. He comes with a letter to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to take to secure a commission."

On the 13th of May, the second or third day after Mr. Crampton's arrival at Halifax, J. W. Preston, lieutenant of her Majesty's 76th regiment, who had charge of the depot at Niagara for the reception of recruits sent from the United States, wrote to Captain Strobel as follows:

"My dear Strobel: I am directed by the general to acquaint you that Mr. Crampton wants to see you, at his house, at 10 o'clock tomorrow morning; be punctual. If you like, come up to my room at half-past 9 o'clock, and we will go together."

These letters corroborate Captain Strobel's statement, that Mr. Crampton, while at Halifax, was engaged about the recruiting business within the United States. He afterwards went with Captain Strobel to Quebec, for the same purpose.

Passing, without comment, the plan for recruiting, which Strobel says was prepared at the request of Mr. Crampton, and approved by him and Sir Gaspard le Marchant, I propose to offer some remarks upon the instructions furnished by Mr. Crampton, while in the provinces, to the recruiting agents who were to go to "Buffalo, Detroit, or Cleveland," "to make known to persons in the United States the terms and conditions upon which recruits will be received into the British service." This paper will be found, with the letters referred to, in Hertz's trial. Its genuineness, I presume, will not be questioned. It is framed with great adroitness, and, as it may be resorted to for a defence of Mr. Crampton's conduct, it is entitled to a careful consideration.

These instructions show that the persons sent into the United States to raise recruits therein for the foreign legion were authorized agents of British officers, and received directions for the guidance of their conduct from her Majesty's minister to this government. It is thought to be unreasonable in this government to complain of any of her Majesty's officers, because the agents thus employed were "enjoined carefully to refrain from anything which would constitute a violation of the law of the United States." A similar injunction to the agents first employed was also contained in the directions which preceded the instructions issued by Mr. Crampton in May; and he well knew how utterly it had been disregarded by them. As his visit to the British provinces had special relation to the recruiting service, it cannot be presumed that he was uninformed of what had then happened to those agents in Philadelphia, New York, and Boston, through which cities he passed on his way to Halifax. This government had, as early as March, ordered prosecutions against the recruiting agents in those cities for having violated the law of the United States; many had been arrested for that offence, and against several of them grand juries had found bills of indict-

ment. Instead of disconnecting himself from the proceedings which had led to this disastrous result, Mr. Crampton went to Halifax and Quebec to make further arrangements for sending other recruiters into the United States. He could have had no sufficient reason to believe that those who received fresh instructions, however cautiously devised, would pay any more regard to his injunction not to violate the law of the United States than Hertz and others had done. His experience of the past should have deterred him from renewing the experiment. As these instructions were furnished to many agents, they doubtless were framed with a view to bear a critical inspection, and, in case of emergency, to be adduced as proof to show that special regard was intended to be paid to the United States neutrality law. They will, however, hardly answer that purpose. There can be no doubt that these revised instructions were intended to impress the recruiting agents with the expediency of greater circumspection in their business, but it is evident that the motive for this caution had much more respect for the success of the recruiting project than for the United States law. This is apparent from the following paragraph of these instructions:

"7. It is essential to success that no assemblages of persons should take place at beer-houses, or other similar places of entertainment, for the purpose of devising measures for enlisting; and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would undoubtedly be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself."

Though the last instructions are a restriction upon the construction which Lord Clarendon has given to the law and rights of the United States, they would, even if literally observed, infringe both. This government maintains that in every instance where a person, whether a citizen or a foreigner, has been brought to the determination to leave this country for the purpose of entering into a foreign service as a soldier or sailor by any inducements offered by recruiting agents here, the law of the United States has been violated.

There certainly can be no doubt of the violation of the law of the United States in every case where one party, the recruit, has been induced by the terms offered to him actually to leave the United States for the purpose of entering into foreign military service, and the other party has furnished the means and borne the expense of taking him to a foreign depot in the expectation that he would consummate the act by an enlistment. It will not, I presume, be denied that several hundred cases of this kind actually occurred in carrying out the scheme of British recruitment. The very design of employing agents for such a purpose, to act within the limits of the United States, involved in its consequences an infringement of that law.

It is the solemn duty of the government of the United States to

maintain this construction of their neutrality law, and the attempt to set up and sustain a different one has created much surprise; that it has been done by a friendly government, with which the United States are most anxious to maintain and strengthen the relations of amity, is the cause of deep regret.

When the President presented the case to the consideration of her Majesty's government, with the assurance that he had such information as compelled him to believe that British officers, in eminent stations, were implicated in a scheme which had resulted in an infringement of the rights of the United States and a violation of their law, and asked for some satisfaction for the wrong, he certainly did not expect that the conduct of these officers would be justified upon principles which impair the sovereignty of the United States as an independent nation, and by an interpretation of their law which makes it entirely ineffective for the purposes intended.

Some satisfaction for the injury was confidently expected, but nothing that can be regarded in that light has been offered; and this government is compelled, in vindication of its rights and laws, to take a course which it sincerely hoped her Majesty's government would have rendered unnecessary.

Her Majesty's minister to this government, Mr. Crampton, has taken a conspicuous part in organizing and executing the scheme for recruiting for the British army within the United States. Were it possible, with due regard to the evidence and disclosures in the case, to assign him a subordinate part in that scheme, even that would not allow the President to change the course which he is obliged, under the circumstances, to pursue towards him. Any participation in the project, as it has been developed, of raising recruits in this country for the British service, was incompatible with his official relations to this government. His connexion with that affair has rendered him an unacceptable representative of her Britannic Majesty near this government, and you are directed by the President to ask her Majesty's government to recall him.

Mr. Rowcroft, the British consul at Cincinnati, and Mr. Matthew, the British consul at Philadelphia, are implicated in the recruiting project, and you are further directed by the President to ask for their removal for that cause.

The persons connected with the British consulate at New York have been actively engaged in furthering the recruiting scheme. Mr. Stanley, the assistant or clerk of the consul, has taken a more open and effective part than the consul himself, and is now under an indictment for violating the law against foreign recruiting. The consul, Mr. Barclay, could not but know of Mr. Stanley's conduct in that matter, but he still retains him in the consulate. Besides the responsibility that rightfully attaches to Mr. Barclay for the improper conduct of an employee in his office and under his immediate and daily observation, this government is satisfied that he has himself not only favored the recruiting for the British army, but has participated in it. Moreover, the improper conduct of Mr. Barclay in the case of the barque Maury has justly given offence to the commercial community in which he resides and with which he has official connexion.

For these reasons this government deems it proper to instruct you to ask the government of Great Britain to withdraw Mr. Barclay from the post of British consul at New York.

You are directed by the President to read this despatch to the Earl of Clarendon, and, should he desire it, to hand him a copy.

The copies of the original documents to which I have referred are contained in Hertz's trial. I send you herewith an authentic report of that trial, which you will offer to Lord Clarendon as a document connected with this despatch. I also send herewith a copy of the proceedings of the Chamber of Commerce in the city of New York relative to Mr. Barclay's conduct in the case of the barque Maury. This, also, you will present to Lord Clarendon, as furnishing one ground for the request herein made for the withdrawal of Mr. Barclay.

I am, sir, respectfully, your obedient servant.

W. L. MARCY.

JAMES BUCHANAN, Esq., *&c., &c., &c.*

Mr. Buchanan to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,
London, February 1, 1856.

SIR: I had an interview, by appointment, on Tuesday last, with Lord Clarendon at the Foreign Office. After some preliminary conversation on the subject of the approaching peace with Russia, I informed him I had come on purpose to read to him your despatch to me of the 28th ultimo, (December,) in reply to his despatch to Mr. Crampton of the 16th November last. Before proceeding to this, however, I expressed my desire to correct an error, or rather an omission, in his report of a remark made by myself, contained in his despatch to Mr. Crampton. He said he "would be very sorry if any such error had been committed by him; that nothing certainly was further from his intention." I replied that I had not the most remote idea he had done this intentionally, and I had no doubt it was a mere inadvertence; but still, it was proper for me to correct it. I then read to his lordship the following paragraph from his despatch to Mr. Crampton of the 16th November:

"Before I proceed to offer any remarks upon this despatch, (your No. 118, of the 13th October,) it will be proper to state that when it was read to me by Mr. Buchanan, I had no cognizance of Mr. Marcy's despatch of the 15th July, to which it alludes, and of which a copy was also transmitted to you; and upon my observing this to Mr. Buchanan, he said he had not thought it necessary to communicate it to me, as, before it had reached him, he had received my note of the 16th July, which he thought would finally settle the question that had arisen between the two governments."

I then observed that his lordship's omission consisted in not having

added the qualifications which I made at the time to this remark, that when I received your despatch of the 15th July I had not the least idea of Mr. Crampton's complicity in the business of recruiting. (In truth, I never had until I received your private letter of the 2d September.) His lordship said he "did not recollect that I had made this remark at the time; though this was quite probable, as he did recollect I had previously informed him, more than once, when speaking in reference to the satisfaction I had expressed in transmitting to you his note to me of the 16th July, that I had no idea at the time of Mr. Crampton's complicity in the affair." I stated it was quite certain I had made this remark to him at the time. I had always been on my guard in conversing with him on the subject, from the time I first heard from you of Mr. Crampton's alleged complicity. He said he had no doubt I was correct in my recollection; and I told him that in this I could not be mistaken, not only because my memory was distinct, but because I had made notes of our conversation soon after it occurred. He said, for his own part, he never had time to make such notes, and repeated he had no doubt my statement was correct, and expressed his regret that he had not embraced my remark in his despatch to Mr. Crampton, but observed that he did not see its importance. I told him it might, possibly, be of some consequence to myself, and I had ever considered Mr. Crampton's complicity in the affair a matter of very grave importance. I then mentioned that in other respects his statement was not altogether correct, and I repeated to him the language which I had employed on the occasion, as follows:

"I did not deem it necessary to communicate this despatch (that of the 15th July) to your lordship until I should hear from Mr. Marcy on the subject of your note of the 16th July, which I thought at the time would finally settle the question, because I had not then the least idea of Mr. Crampton's complicity in the business of recruiting." * * * * * * * *

Yours, very respectfully,

JAMES BUCHANAN.

ATTORNEY GENERAL'S REPORT TO THE PRESIDENT.

ATTORNEY GENERAL'S OFFICE,
February 27, 1856.

In answer to that part of the resolution of the Senate of the 25th instant, which calls for evidence and documents to show the connexion of agents and officers of Great Britain with the alleged violation of the laws and sovereign rights of the United States, the Attorney General has the honor to lay before the President a copy of a correspondence and accompanying documents, with the attorneys of the United States for the district of Massachusetts, the southern district of New York, the eastern district of Pennsylvania, and the southern district of Ohio; and also a transcript of his official opinion of the 9th of August, pursuant to the President's order of the 6th of August last.

C. CUSHING.

To the PRESIDENT.

List of papers accompanying the report of the Attorney General to the President, of February 27, 1856.

The President of the United States to the Attorney General, August 6, 1855.
Mr. Cushing to the President, August 9, 1855.
Mr. McKeon to Mr. Marcy, March 22, 1855.
Mr. Cushing to Mr. McKeon, March 23, 1855.
Mr. McKeon to Mr. Cushing, March 24, 1855.
Mr. McKeon to Mr. Cushing, October 16, 1855.
Mr. McKeon to Mr. Cushing, October 17, 1855.
Mr. Cushing to Mr. McKeon, October 20, 1855.
Mr. McKeon to Mr. Cushing, November 1, 1855.
Mr. Cushing to Mr. McKeon, December 8, 1855.
Mr. McKeon to Mr. Cushing, December 11, 1855.
Mr. Cushing to Mr. Van Dyke, March 26, 1855.
Mr. Van Dyke to Mr. Cushing, March 29, 1855.
Mr. Van Dyke to Mr. Cushing, September 10, 1855.
Mr. Cushing to Mr. Van Dyke, September 12, 1855.
Mr. Cushing to Mr. Van Dyke, September 17, 1855.
Mr. Van Dyke to Mr. Cushing, September 27, 1855.
Mr. Cushing to Mr. Van Dyke, September 28, 1855.
Mr. Cushing to Mr. Van Dyke, December 18, 1855.
Mr. Van Dyke to Mr. Cushing, December 19, 1855.
Mr. Cushing to Mr. Jewett, December 8, 1855.
Mr. Jewett to Mr. Cushing, December 18, 1855.
Mr. Cushing to Mr. Jewett, January 10, 1856.
Mr. Cushing to Mr. Hallett, December 8, 1855.
Mr. Hallett to Mr. Cushing, December 24, 1855.
Mr. Cushing to Mr. Hallett, January 17, 1856.

EXECUTIVE MANSION,
Washington, August 6, 1855.

The reports of the district attorneys of the southern district of New York and the eastern district of Pennsylvania, on the subject of the levy of troops in the United States by official or other agents of Great Britain, are returned herewith to the Attorney General, and his opinion is required upon the question, whether or not the acts reported are in violation of the municipal law and of the national sovereignty and neutrality; and especially upon the question, what legal responsibility, if any, those acts devolve on the British minister and British consuls.

FRANKLIN PIERCE.

ATTORNEY GENERAL'S OFFICE,
August 9, 1855.

SIR: I have the honor to submit herewith the considerations of law applicable to the enlistment of troops within the United States by the British government, in so far as the facts appearing in the documents before me concern the personal action either of the British minister or of the British consuls in the United States.

There is no room for doubt as to the law regarding the general question.

In the first place, the act of Congress of April 20th, 1818, contains the following provision:

"SEC. 2. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits of, or jurisdiction of the United States, with intent to be enlisted or entered into the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years. (3 Stat. at Large, p. 448.)

Of course, as the levy of troops within the United States for foreign service is forbidden by law, no such right has, by Executive permission, been given to Great Britain. To the contrary of this, the British government was expressly notified, by letter of Mr. Marcy to Mr. Crampton of April 28th, 1854, that no enlistments in the United States would be permitted either to Great Britain or to Russia. (Ex. Doc., 1st session 33d Congress, vol. xii, No. 103, p. 5.)

In the second place, independently of the municipal relations of the acts in question, they constitute, whether they be the acts of the British government or of its minister and consuls, a violation of the sovereignty and of the neutral rights of the United States.

The rule of public law is unequivocal on this point, and is correctly stated as follows, by Wolf:

"Since the right of raising soldiers is a right of majesty, which

must not be violated by a foreign nation, it is not permitted to raise soldiers on the territory without the consent of its sovereign." (*Jus Gentium*, s. 1174.)

By Vattel: "As war cannot be carried on without soldiers, it is evident that, whoever has the right of making war, has also naturally that of raising troops. The latter, therefore, belongs likewise to the sovereign, and is one of the prerogatives of majesty." (Vattel, *Droit des Gens*, iii. 3, ch. ii, p. 293.)

* * * * * * * *

"As the right of levying soldiers belongs solely to the nation or the sovereign, no person must attempt to enlist soldiers in a foreign country without the permission of the sovereign; and, even with that permission, none but volunteers are to be enlisted; for the service of their country is out of the question here, and no sovereign has a right to give or sell his subjects to another.

"Whoever undertakes to enlist soldiers in a foreign country without the sovereign's permission, and, in general, whoever entices away the subjects of another state, violates one of the most sacred rights of the prince and the nation. This crime is distinguished by the name of kidnapping or man-stealing, and is punished with the utmost severity in every well-regulated state. Foreign recruiters are hanged without mercy, and with great justice. It is not presumed that their sovereign has ordered them to commit a crime; and supposing even that they had received such an order, they ought not to have obeyed it; their sovereign having no right to command what is contrary to the law of nature." * * * "But if it appears that they acted by order, such a proceeding in a foreign sovereign is justly considered as an injury, and as a sufficient cause for declaring war against him, unless he makes suitable reparation." (Vattel, *Droit des Gens*, l. iii, ch. ii, p. 298.)

By Kluber: "A state entirely neutral has the right to exact, even by force, if necessary, that belligerent powers do not use its neutral territory for the purposes of war; that they take not therefrom munitions of war, and provisions and other immediate requirements of war, for their armies; *that they do not make there any military preparations, enrolments or collections of troops;* that none of their troops, armed or unarmed, pass through, &c., &c.; that they exercise there no act of hostility against the persons or property of the subjects of the hostile state; that they do not occupy it militarily, or make it the theatre of war." (*Droit des Gens Moderne de l'Europe*, s. 285.)

By G. F. de Martens: "Whilst, in case of rupture between two nations, a neutral state preserves the full enjoyment of its territorial rights, it can, in the absence of treaties, prohibit during the war, as in time of peace, any passage or sojourn of foreign troops, and much more forbid the occupation of its fortresses, the recruiting, mustering and exercising troops; and it may use force against those who shall attempt to violate the prohibition." (*Précis du Droit des Gens*, s. 350.)

By Galiani: "All governments are accustomed to forbid, under capital penalty, any foreigner to make military engagements or recruits *within their territory*; in doing which they do no more than to

sustain and defend a natural right, and one inherent in every sovereignty. * *

"The neutral sovereign who leaves his subjects at liberty to engage themselves in the service of a foreign belligerent, will not therein be wanting to his neutral duties, provided it has been customary with his nation; if it has been usual in time of peace; if it accords with the physical and political condition of the country; if, in fine, he practises indifference and impartiality, not denying to one belligerent what he concedes to the other. But if a sovereign has not been accustomed to allow his subjects to enlist in the military or naval service of other governments, it may well be doubted whether he may, for the first time, do it on the occurrence of war between two states, each of which is in amity with him. I am not prepared to say that in so doing he gives equality of advantage and facilities to both; for there might be inequality in the need of the belligerents; for perhaps *one of them, suffering from deficiency of men, would derive precious and powerful succor from such permission, while to the other it would be useless and superfluous.* In my opinion, therefore, this question comes within the general rule of essential neutral duties: that is, to continue in the anterior condition, it being lawful to persevere in what has been usual, but unlawful to innovate." (*Dei Doveri de' Principi Neutrali*, p. 325, 327, 329.)

By Hautefeuille: "The duties of belligerents may be summed up in very few words. The belligerent ought to abstain from the employment of all such indirect means to molest his enemy as, in the accomplishment of their object, would first injuriously affect a neutral nation. He ought to respect, in the most complete and absolute manner, the independence and sovereignty of nations at peace: in a word, he ought to treat them in the same manner as if the most profound peace continued to prevail. Those nations, in fact, are at peace with him, fulfilling strictly their duties of neutrality; they have the right to enjoy the advantages of their position, and to be exempt from all the evils of war; the duty of the belligerent is to abstain from the infringement of this right. Thus neutral territory ought to be held sacred and inviolable by nations at war; these last ought not, on any pretext, nor in any manner, to make use of such territory to subserve their purposes of hostilities, directly or indirectly. The passage of armed troops, the levying of soldiers, &c., &c., without the consent of the sovereign, would constitute an offence against the sovereignty of the neutral, and a violation of the duty of the belligerent." (*Droits et Devoirs des Nations Neutres*, tom. i, 312, 313.)

"As to the territory of neutral nations, the occurrence of hostilities makes no change nor modification of their rights: they remain inviolable as in time of peace. Their territory ought, then, to be sheltered from all enterprises of the belligerents, of whatever nature they may be. The consequences of war ought never to be felt by them directly; that is to say, no act of hostility should be committed against them, under any pretext.

"Belligerent nations, in this respect, have only the rights they possessed in time of peace, because war never injuriously affects nations at peace. Belligerents cannot, then, in any case, without the

permission of the sovereign, use neutral territory, I do not say directly, for the operations of war; but cannot even make use of it for any advantage whatever, to the prejudice of their enemy. This permission cannot be granted to them by the neutral without violating his duties.

"The principle of the inviolability of the territory being admitted, the conclusion, as absolute as the principle itself, follows: that a belligerent has no right to use neutral territory, in any manner whatever, without the permission of the neutral nation, sovereign of such territory; and cannot, therefore, levy troops there, and march armies through it, &c., without this permission.

"The neutral has the incontestable right to resist every attempt the belligerent may make to use his territory; to oppose it by all the means in his power, and even by force of arms, in the same manner as a citizen has the right to defend his property by all the means placed at his disposal by the law to which he is subject." (*Ibid*, tom. ii, pp. 48, 49.)

I do not perceive that this doctrine is explicitly produced in any one of the books of international law published during the last few years in Great Britain. Possibly their silence on this point may be caused by the policy of their country, which, under the kings of the house of Hanover, has frequently relied upon foreign recruits in time of war. However this may be, some of the English works referred to recognise the right of every sovereignty to the exclusive use of its own territory and resources, (Wildman's International Law, vol. i, p. 64.) but without adverting to the present logical consequence of this right; although one of them discusses fully the collateral question, whether a state loses its neutrality by permitting foreign levies, and concludes properly, that, if it be permitted to one, it should be permitted to each of the respective belligerent powers. (Manning's Law of Nations, bk. iii, ch. i.)

In this connexion the same accredited English writer considers and confutes the assumption, crudely and erroneously taken up in Great Britain, that some doctrine to the contrary of this is to be found in Vattel; and, upon an elaborate review of the whole subject, he concludes thus:

"Foreign levies may not be allowed to one belligerent, while refused to his antagonist, consistently with the duties of neutrality. When treaties, *antecedent* to war, permit such exclusive privilege, then * * no complaint of breach of neutrality can be maintained by the excluded party. But, when no antecedent treaty exists, such a permission would be a violation of neutrality, the principles of which demand the strictest abstinence from assistance to either party, and, of course, will not admit that exclusive privileges, in so important a particular, should be granted to one belligerent. Nor have the customs of Europe, derived from the practices of the middle ages, established any usage that prevents this question from being settled in accordance with the dictates of reason, or, in other words, with the law of nature." (Manning, *ibid*, p. 180.)

Mr. Manning's reasoning is conclusive so far as it goes. And the imperfection of other English law books in this respect is of no ac-

count, as against the general authority of the expounders of international law in all the rest of Christendom.

Misconstruction has also been placed on the fact that Bynkershoek maintains the right of private or voluntary expatriation, even for the purpose of foreign military service. But he does not express or countenance the thought that a foreign belligerent may recruit soldiers in a neutral country without the consent of its sovereign. On the contrary, he exhibits in full the legislation of the United Provinces, according to which it was a capital offence to make enlistments in the country without consent of the States General. (*Quæst. Jur. Publici*, lib. i, c. 22.)

Besides, Great Britain has, in her own legislation, sanctioned and adopted the rule of public law, by enacting that if any person whatever, within the United Kingdom, or in any part of the dominions of Great Britain, shall hire, engage, retain or procure, or shall attempt or endeavor to hire, retain, engage or procure any person whatever to enlist, or to enter or engage to enlist, as an officer, soldier, sailor, or marine, either on land or sea service, for or under or in aid of any foreign prince or government, or to go or agree to go or embark from any place in the British dominions for the purpose or with the intent to be so enlisted, entered or engaged as aforesaid, every person so offending shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment at the discretion of the court having jurisdiction of the act. (Act of 59 Geo. III, ch. 69.)

We, in the United States, acting in the sense of natural right, and following the rules of public law as explained by the jurists of continental Europe, asserted and established this doctrine at a very early period, in opposition to the undertaking of the French government, through its minister, M. Genet, to man or equip cruisers within the United States. (Mr. Jefferson to M. Genet, June 17, 1793—American State Papers, For. Aff., vol. i, p. 154.)

And our judicial text-books are full and explicit on the same point. (Wheaton by Lawrence, p. 498; Kent's Com., lec. 6.)

It is obvious to the most superficial reflection, that no distinction of principle exists in the levy of a military force in the neutral country, as between the land and sea service; and if Great Britain may raise within the United States volunteers for her land service, so Russia may raise them for her marine service, that is, may fit out privateers in our ports; and, indeed, if we grant or permit the former privilege to Great Britain, we must, in like manner, in order to be impartially neutral, concede the latter privilege to Russia.

And it is equally obvious that foreign recruiting cannot be forbidden or permitted under the influence of any assumed national sympathies or antipathies. Individual or national preferences are quite immaterial in such a question. The United States cannot, either lawfully or honorably, practise a simulated neutrality; nor can a dissembled alliance be claimed or expected from us, either by Great Britain or by Russia.

From the well-established rules and principles of law, then, it is plain to conclude:

1. The acts of enlistment in question are contrary to the municipal law of this country, and indictable as a high misdemeanor.

2. Those acts, if permitted to one belligerent, must be permitted to all, in observance of impartial neutrality.

3. Being against law in the United States, and therefore not permitted to Great Britain, if undertaken by her as a government, they afford just cause of war, being direct national violation of the territorial sovereignty of one nation by another.

4. Whatever agents of the British government, whether official or unofficial, acting voluntarily or by orders, have participated in such acts, are not only guilty of a criminal infraction of the statute law, but also, in the language of Vattel, of violating one of the most sacred rights of the nation.

I presume that if, in the present case, the British minister imagines that the acts performed under his direction were not contrary to the municipal law, it must be on the ground that the recruits were not completely enlisted in the United States; that is, did not here in all form enter the military service of Great Britain. That assumption is altogether erroneous. The statute is express, that if any person shall hire or *retain* another person *to go beyond the limits* or jurisdiction of the United States, *with intent* to be enlisted or entered into the service of any foreign state, he shall be deemed guilty of the defined misdemeanor.

It is possible, also, that he may have supposed that a solemn contract of hiring in the United States is necessary to constitute the offence. That would be mere delusion. The words of the statute are "hire or retain." It is true, our act of Congress does not expressly say, as the British act of Parliament does, "whether any enlistment money, pay, or reward shall have been given and received or not," (Act 59 Geo. III, ch. 69, s. 2:) nor was it necessary to insert these words. A party may be retained by a verbal promise, or by invitation for a declared or known purpose. If such a statute could be evaded or set at naught by elaborate contrivances to engage without enlisting, to retain without hiring, to invite without recruiting, to pay recruiting money in fact, but under another name of board, passage money, expenses, or the like, it would be idle to pass acts of Congress for the punishment of this or any other offence.

However this may be, and if such were the thought of the British government, it has not been successfully carried out; for, on the evidence before me, including the general instructions of the British minister and his direct correspondence with recruiting officers in the United States and others, my opinion is positive, that the parties have made themselves amenable to the penalties of the statute, and may be convicted before any competent court of the United States.

It is further to be observed, in conclusion of this branch of the subject, that whether the acts of the British minister and his agents, in recruiting troops within the United States, do or do not come within the technical provisions of the act of Congress, is altogether immaterial to the question of international right, as between this government and that of Great Britain. If, by ingenious evasions of the letter of a penal statute, intended only for private malefactors, the British gov-

ernment should, nevertheless, levy troops here, the fact of the statute being thus defeated and trampled under foot would serve only to augment the public wrong.

Suppose, for instance, that the British government shall have said to its officers, civil or military, in the British North American provinces, and to its diplomatic or consular agents in the United States: "You will proceed to raise so many men in the United States; but remember that to do so is forbidden by the municipal law of that country, and is indictable as a misdemeanor; you will, therefore, take care to proceed cunningly in this, so as not to incur the penalties of the statute." Such instructions, while they might have the effect of raising the troops, as desired by the British government, without its agents incurring the penalties of the statute, would but constitute a more flagrant and aggravated violation of the national dignity and the sovereign rights of the United States.

In truth, the statute in this matter is of but secondary account. The main consideration is the sovereign right of the United States to exercise complete and exclusive jurisdiction within their own territory; to remain strictly neutral, if they please, in the face of the warring nations of Europe; and of course not to tolerate enlistments in the country by either of the belligerents, whether for land or sea service. If there be local statutes to punish the agents or parties to such enlistments, it is well; but that is a domestic question for our consideration, and does not regard any foreign government. All which it concerns a foreign government to know is, whether we, as a government, permit such enlistments. It is bound to ask permission of us before coming into our territory to raise troops for its own service. It has no business to inquire whether there be statutes on the subject or not. Least of all has it the right to take notice of the statutes only to see how it may devise means by which to evade them. Instead of this, it is bound, not only by every consideration of international comity, but of the strictest international law, to respect the sovereignty and regard the public policy of the United States.

Accordingly, when, at the commencement of the great European struggle between England and France, near the close of the last century, the French convention assumed to recruit marine forces in the United States, it was held by President Washington, and by his Secretary of State, Mr. Jefferson, as explained in the correspondence hereinbefore quoted, that by the law of nations, in virtue of our sovereignty, and without stopping to enact municipal laws on the subject, we had full right to repress and repel foreign enlistments, and, *e converso*, that the attempt to make any such enlistments was an act of gross national aggression on the United States.

When a foreign government, by its agents, enters into the United States to perform acts in violation of our sovereignty, and contrary to our public policy, though acts not made penal by municipal law, that is a grave national indignity and wrong. If, in addition to this, such foreign government, knowing that penal statutes on the subject exist, deliberately undertakes to evade the municipal law, and thus to baffle and bring into disrepute the internal administration of the country,

in such case the foreign government not only violates but insults our national sovereignty.

I repeat, then, that if it were to be supposed that the British government had so far forgotten what is due to its own dignity, as to instruct its agents within the territories of the German Bund, in the Netherlands, in the United States, to enlist recruits without respect for local sovereignty, but with care to avoid or evade the letter of local statutes, instead of diminishing, that would aggravate, the injustice and the illegality of the proceeding in the eye of the law of nations, and the intensity of the public wrong as regards the neutral States thus converted, without their consent, into a recruiting ground for the armies of Great Britain.

Such instructions would be derogatory to the public honor in another respect. They presume that the United States, without becoming the open ally of Great Britain, will, by conniving at the use of its territory for belligerent purposes, while professing neutrality, thus carry on, as already intimated, a dishonorable war in disguise against Russia.

It appears, however, that the British government, finding it impossible to keep the ranks of its army filled by voluntary enlistments, and being loth to encounter the responsibility of a law for conscription, for draughts on militia, for periodical service of its able-bodied men, or for any other systematic method of raising troops from its own population, introduced into Parliament a bill entitled "An act to permit foreigners to be enlisted, and to serve as officers and soldiers in her Majesty's forces," but which was in fact a bill to authorize the government to employ agents to carry on recruiting service in the neutral states of Europe and America.

The law was earnestly objected to in its progress, as insulting to neutral states and derogatory to the national dignity, but was passed, nevertheless, on the 22d of December, 1854. (Hansard's Debates, third series, volume 136, passim.)

At an early day after the passage of this act, measures were taken to recruit officers and men, for a proposed foreign legion, in the United States, those measures being publicly pursued under the official responsibility of Sir Gaspard le Marchant, lieutenant governor of the province of Nova Scotia. A military depot was established at Halifax for the reception and enrolment of recruits; and Mr. Howe, a member of the provincial government, with other agents, came into the United States to make arrangements for engaging and forwarding the recruits, chiefly from Boston, New York, and Philadelphia. Subsequently, corresponding arrangements were made for collecting and forwarding recruits from the western States, by Buffalo or Niagara, through Upper Canada.

These acts were commenced and prosecuted with printed handbills and other means of advertisement, and recruits were collected in depots at New York and elsewhere, and regularly transported to Canada or Nova Scotia with undisguised notoriety, as if the United States were still a constituent part of the British empire. Of course they attracted great attention, and the various measures, whether legal or political, proper to put a stop to them, were instituted by your direc-

tion, through the instrumentality of the foreign or legal departments of the government of the United States.

In the course of the investigations which ensued, among the facts brought to light are some, in the documents referred to me, which unequivocally implicate not only British consuls but the British minister himself in the unlawful transactions in question, and so call for inquiry as to the rights of this government in reference to them and their government.

In the application of the general rules of law to the offences committed, it is necessary to distinguish between the case of any of the consuls and that of the minister.

The several district attorneys of the United States, within whose jurisdiction, respectively, the cases occurred, very properly assumed that the consuls were subject to indictment for infraction of the municipal law, and have proceeded accordingly—prosecutions having already been instituted in the southern district of Ohio against the consul at Cincinnati, and in the southern district of New York against an officer of the consulate of New York.

Nothing is better settled by adjudication in this country, than that foreign consuls are subject to criminal process for violation of the municipal laws. (United States *vs.* Ravara, ii Dall., 297; Mannhardt *vs.* Soderstrom, i Bin., 144; Commonwealth *vs.* Kosloff, i Serg. and R., 545; State *vs.* De la Foret, ii Nott and Mc., 217.)

These adjudications are in exact conformity with the law of nations in regard to consuls, as understood and practised not less in Great Britain than in the other states of Christendom. (See Opin., November 4, 1854, MSS.; also, Kent's Com., vol. i, p. 44; Wheaton's El. by Lawrence, 305.)

The only privilege which a consul enjoys, in this respect, in the United States, is that awarded to him by the constitution, of being tried by the federal courts: the effect of which is, that his case remains within the control of the general government, which may deal with it according to the convenience or the exigencies of its foreign policy, without impediment from the authority of any of the individual States of the Union. (Const., art. iii, sec. 2; act of September 24, 1789, sec. 9—i Stat. at Large, p. 77.)

The consul at Cincinnati, as appears by the legal proceedings there, supposes that he is entitled to the benefits of certain peculiar stipulations in the consular convention between the United States and France, of February 23, 1853. If it were so, that would not serve him on the main point, because it does not exempt consuls from the criminal jurisdiction of either of the contracting governments. But this convention has no application whatever to the consular relations of Great Britain and the United States. Whether it applies or not to governments with which we have entered into stipulations to place our respective consuls on the footing of the most favored nation, is a question as yet *sub lite*. But there is no stipulation of that nature in existence, as between Great Britain and the United States. Of course, the duties and the rights of American consuls in Great Britain, and of British consuls in the United States, stand upon the law of nations, except as the same is modified by their treaties, and by the

local law of either country. The local law of each, as we have seen, withholds from consuls the diplomatic privilege of exterritoriality. A British consul, therefore, has no just cause of complaint, if, when charged with an offence, he is held amenable to the criminal jurisdiction of the United States.

In addition to those ordinary means of redress in the case of the misconduct of a foreign consul, is that afforded by the law of nations. The President of the United States has the undoubted power, in his discretion, to withdraw the *exequatur* of any foreign consul. To justify the exercise of this power, he does not need the fact of a technical violation of law judicially proved. He may exercise it for any reasonable cause, whenever, in his judgment, it is called for by the interests or the honor of the United States. (De Clercq, *Guide des Consulats*, p. 101.)

On each of these points provision was made in the commercial convention between the United States and Great Britain of July 3d, 1815, which stipulates that "before any consul (in either country) shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent; and, * * in case of illegal or improper conduct towards the laws or government of the country to which he is sent, such consul may either be punished according to law, if the law will reach the case, or be sent back; the offended government assigning to the other the reasons for the same." (Art. iv.)

This convention, by its terms, was to subsist only four years. By a subsequent convention, that of October 20th, 1818, its duration was prorogued ten years, (art. iv;) and afterwards, by the convention of August 6th, 1827, for another ten years, and until denounced by either party on twelve months' notice.

For the rest, the stipulations of the convention of 1815, as continued by the conventions of 1818 and 1827, are but declaratory of the law of nations, as that is understood both in Great Britain and the United States.

In regard to the minister, it is clear, if he violate the laws of the government to which he is accredited, or otherwise offend its sovereignty, there is no remedy except in the manner and form prescribed by the law of nations. He enjoys an exemption from judicial process, which immunity is not so much his right as that of his government.

It was formerly held in England, as we see in March's case, reported by Rolle, in the time of James I., that, "although an ambassador is privileged by the law of nature and of nations, yet if he commit any offence against the law of nature or reason, he shall lose his privilege, but not if he offend against a positive law of any realm." (Rolle's R., p. 175.) No such distinction between *mala prohibita* and *mala in se*, as respects ambassadors, is now admitted; and their exterritoriality is the unanimous doctrine of all publicists, and is recognised in England, as it is in the United States, by statute.

The whole question is learnedly discussed by Wildman, whose views are in accordance with those of Grotius and Bynkershoek, which now prevail throughout Christendom. (Institutes, vol. 1, p. 90.)

But the privilege of exterritoriality is not conferred on a public min-

ister as a shield to crime. For any crimes which he may commit, the remedy varies according to the nature of the case.

As to offences against the municipal law of the country, committed by a foreign minister, or other person entitled to the privilege of diplomatic exterritoriality, we have a statute which declares that any writ or process against them, issued by any court, is utterly null and void. (Act of April 30, 1790, sec. 25—1 Statutes at Large, p. 117.) And this immunity of public ministers has been the subject of judicial recognition in several instances. (See United States *vs.* Hand, ii Wash. C. C. R. 435; United States *vs.* Liddle, ibid, p. 205; ex-parte Cabrera, ibid, p. 232. See also Wheaton by Lawrence, p. 284; Kent's Com. vol. i, p. 38: Opinion of Mr. Attorney General Lee, of July 27, 1797.)

The cases of criminality on the part of a public minister may be distinguished into the following classes:

1st. If the crime committed by the minister affect individuals only, (*delicta privata*,) the government of the country is to demand his recall; and if his government refuse to recall him, the government of the country may either expel him by force, or bring him to trial, as no longer entitled to the immunities of a minister. (Kluber, *Droit des Gens.*, sec. 211; Ch. de Martens' *Guide Diplomatique*, tom. i, p. 88.)

2d. If the crime affect the public safety of the country, its government may, for urgent cause, either seize and hold his person until the danger be passed, or expel him from the country by force; for the safety of the state, which is superior to other considerations, is not to be perilled by overstrained regard for the privileges of an ambassador. (Ibid; see also Kent, vol. i, 38; schooner Exchange *vs.* McFadden, vii Cranch, 116, 139.) Indeed, it has been held, in such a case, in England, that the offending party may be proceeded against for treason. "If," it is affirmed in the case of Rex *vs.* Owen, "an ambassador compass and intend death to the king's person, in the land where he is, he may be condemned and executed for treason." (Rex *vs.* Owen, Rolle's R., p. 188.) But that dictum is not in accord with precedents, which, in general, go no further than the arrest and confinement, and the eventual or the immediate expulsion, of a public minister, for treasonable acts, or acts dangerous to the security of the state.

Signal instances of the arrest or summary expulsion of public ministers in such a case, are collected by Bynkershoek, by Wicquefort, by Wildman, and by Charles de Martens, (*Causes Célèbres.*)

A very modern case of great notoriety is that of Sir Henry Bulwer, who, while British minister at Madrid, during the administration of the Duke of Valencia, (General Narvaez,) being detected in complicity with domestic revolutionists, was required by letter of the Duke of Sotomayor, the Spanish Minister of Foreign Affairs, to quit Spain immediately, and did so. (Hernandez, *España y el Visconde Palmerston*, Madrid, 1848.)

This incident occasioned a brief interruption of the diplomatic relations of the two governments; but Spain stood firm; and, as Sir Henry Bulwer had acted under the instructions of Lord Palmerston, the British Minister of Foreign Affairs, the British government, after

some delay and the exchange of explanations, conscious that it had been placed in the wrong by Lord Palmerston, submitted to send a new minister to Madrid. (Hansard's Debates, third series, vol. 99, p. 347.)

3d. Finally, if the offence be grave, but not such as to compromise the public safety, the course of proceeding in accordance with the law of nations, and sanctioned by diplomatic usage, is to demand the recall of the minister, and meanwhile to refuse, or not, all further intercourse with him, according to the circumstances.

The United States have pursued this course in several instances, of which a memorable one, and exactly pertinent to the present case, is the demand on France for the recall of M. Genet, guilty of enlistments in this country without the consent of its government. (Am. State Papers, For. Aff., vol. i, No. 65.)

The public law and usage in this respect are well stated by a modern English author, who says:

"With respect to the dismissal of ministers, it is usual, where the matter admits of delay, first to demand his recall. * * But this is a mere act of courtesy, which cannot be expected on occasions of imminent peril. The dismissal of an ambassador on such occasions is not an assumption of jurisdiction, but a measure of self-defence, which no one has ever denied to be legal, in the case of ambassadors. * * If an ambassador use force, he may be repelled by force. * * When the danger is imminent, an ambassador may be seized as a public enemy, may be imprisoned, may be put to death, if it be indispensably necessary to our safety." (Wildman, Institutes, vol. i, p. 114.)

On the whole, the case of the British minister regarded in the light of established rules of the law of nations, and diplomatic usage founded thereon, would seem to resolve itself into, first, a question of strict right, and, secondly, of discretion in the exercise of that right.

It clearly is not a case affecting the security of the state, and thus needing or justifying the interposition of summary authority, as in the instance of the Prince of Cellamare in France, (Ch. de Martens, *Causes Célèbres*, tom. i, p. 139,) Count Gyllenberg in Great Britain, (Foster's Crown Law, p. 187,) and many other cases of historical and legal notoriety or interest. No acts of violence are imputed to the British minister, nor any purpose or act threatening to the national stability of the United States. What is charged against him is conduct improper in a public minister, illegal as respects the municipal law, injurious to the national sovereignty. If sufficiently shown, it requires to be repressed in such manner as effectively to vindicate the public honor. Of strict right, the President may, as the Queen of Spain did in the case of Sir Henry Bulwer, send his passports to the British minister, with intimation to leave the country without delay; or he may well, in his discretion, adopt the milder course, as President Washington did in the case of M. Genet, that is, after affording to the British minister opportunity of explanation through the Secretary of State, then, if his explanation be not satisfactory, to demand his recall of the Queen's government. The personal esteem which the British minister justly enjoys here in other respects might counsel the latter course, more especially if the British

government, assuming the responsibility of his acts, should thereupon proceed to tender, in its own name, complete and ample satisfaction for having authorized or permitted such a flagrant wrong as the systematic attempt to recruit a military force in the United States, by the instrumentality of the lieutenant-governor of Nova Scotia.

I have the honor to be, very respectfully,

C. CUSHING.

The PRESIDENT.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, March 22, 1855.

SIR: The enclosed handbill was brought to me this morning by Mr. McDonald, with the inquiry whether the employment therein indicated is contrary to law. He is to call again to-morrow.

I have arrived at the conclusion that this business is illegal, in contravention of sec. 2, of the act of 20th April, 1818.

I have the honor to remain, sir, your most obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. W. L. MARCY,
Secretary of State, Washington, D. C.

[Enclosure.]

HIGHLY IMPORTANT TO THE UNEMPLOYED!

The British government having concluded to form a foreign legion in Nova Scotia, and to raise several regiments for duty in the province, offer a bounty of £6, or $30, together with the pay of $8 a month, rations, good clothing, and warm quarters, to every effective man, fit for military duty, from nineteen to forty years of age, to join which are invited English, Irish, Scotch, and Germans. The subscriber (with the view of assisting those who have not the means of paying their passage) hereby gives notice that he has opened a passage office, No. 36, Pearl street, (near Broad,) where he proposes to engage good passages by good vessels to Halifax, leaving twice or three times a week, for the sum of $5, or procure through tickets by the railroad, leaving every morning (Sundays excepted,) and arriving at St. John's, near Montreal, that evening, which passage-money must be paid him or his agent, by the parties, together with the small sum of fifty cents additional for commissions, on arriving at their destination in the province. It is hoped that those effective men who are now suffering and in distress, will avail themselves of this rare opportunity of bettering their condition before it is too late.

ANGUS McDONALD.

[Burrough's steam presses, 113, Fulton street, N. Y.]

ATTORNEY GENERAL'S OFFICE,
March 23, 1855.

SIR: The Secretary of State has referred to me your letter to him of the 22d instant, enclosing a handbill signed "Angus McDonald," who proposes to recruit soldiers for the military service of the British government, and advertises a recruiting station for that object at a place indicated in the city of New York.

Statements, corroborative of this document, appear in sundry newspapers of New York.

It is perfectly clear that any such enlistment is contrary to law. The act of Congress of April 20, 1818, not only forbids military enlistments in the United States, for a purpose hostile to any country in amity with us, but also by foreign states for any purpose whatever.

If the troops recruiting for Great Britain in New York are intended to serve against Russia, the undertaking is in violation of our neutrality; and, if not, still it is in violation of the sovereign authority of the United States.

Not long since the consul of the Mexican republic at San Francisco was duly tried and convicted there of this precise offence, in having enlisted persons in California for the domestic service of his government.

These views of the present question have been submitted to the President, and have his approbation; and he accordingly has directed me to advise you at once, in order to avoid delay, and to desire you to take the proper and lawful steps, in your discretion, to bring to punishment all persons engaged in such enlistments within your district.

I am, very respectfully,

C. CUSHING.

Hon. JOHN MCKEON,
United States Attorney, New York.

SOUTHERN DISTRICT OF NEW YORK,
U S. District Attorney's Office, March 24, 1855.

SIR: I have the honor to acknowledge the receipt of your favor of yesterday, expressing the views of the President in regard to the enlistment at this station of soldiers for Great Britain.

Permit me to say that I will, with great pleasure, carry out the directions contained in your letter.

In order to give publicity to the law, I yesterday officially addressed the marshal of this district, and desired him to use all the means in his power to preserve inviolate our neutrality laws. I enclose a copy of such letter.

I have the honor to remain, sir, your most obedient servant,

JOHN MCKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General United States, Washington, D. C.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, March 23, 1855.

SIR: From the newspapers during the last few days, and from other sources, I am inclined to believe that persons in this city are engaged in recruiting men, and in shipping them to some place out of the jurisdiction of the United States, with the intent there to be formed into regiments, to serve in the present war of France, England, and their allies against Russia.

The United States are happily at peace with all the nations of the world. The continuance of peace to our country depends upon the strict enforcement of our neutrality laws. The government is determined to execute these laws to their fullest extent. This duty we owe to ourselves, and to all the nations with whom we are in amity.

I beg, therefore, to call your attention to the 2d section of the neutrality act of 1818, which provides that "if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, as a marine, or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years."

I wish you to use such means as may be at your command to prevent any violation of the laws of the United States, which are passed to preserve our neutrality.

I will cheerfully coöperate with you in such measures as you may adopt, to prevent the infraction of this important safeguard to our national peace and prosperity.

I have the honor to be, very respectfully, your most obedient servant,

JOHN McKEON,
United States District Attorney.

A. T. HILLYER, Esq.,
United States Marshal, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 16, 1855.

SIR: I have the honor to report, that on the 12th day of October instant I brought to trial in the district court of the United States an indictment against Joseph Wagner, charging him with having, on the third day of August last, hired and retained Abraham Cook to go beyond the limits of the United States with intent to be enlisted in the service of the Queen of Great Britain as a soldier.

The defendant was defended by Hon. Ogden Hoffman and several other eminent counsel. Judge Ingersoll presided, and delivered a charge to the jury, the substance of which is given in the enclosed

published statement. We were engaged in the trial for two days. The jury rendered a verdict of guilty on the 13th instant.

I have the honor to remain your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General of the United States.

[Enclosure.]

Reported for the Journal of Commerce.

U. S. DISTRICT COURT, *Saturday.*

Before JUDGE INGERSOLL.—*Enlisting men for the British service.*

The trial of Joseph Wagner was resumed to-day On the part of the defence another witness was examined, who corroborated the evidence of two others, that Wagner was in bed on the forenoon of the day when Cook swore he met him in the Bowery, and that on the afternoon of that day Wagner went to Boston.

The court, in charging the jury, recited the law of Congress under which the defendant was being tried, which we gave in our report of the first day's proceedings. The court then instructed the jury that this law provides that no person shall hire or retain any person to enlist or enter himself to go beyond the limits of the United States with intent to be enlisted as a soldier into the service of a foreign government. But if one person merely informs another that by his going to Halifax, or any foreign country, he could enlist as a soldier in the service of a foreign government, that would be no crime under the law of Congress. In such a case there would have been no hiring, or retaining by promise of hire, on either side; and the law does not punish any one for giving such information. Any resident of the United States has a right to go to Halifax with intent to enlist; that would be lawful; but it is not lawful for any one, by any consideration paid, or promised to be paid, to engage another person to go to Halifax with intent to there enlist as a soldier in the service of any foreign government. And if Cook agreed with Wagner that he would go to Halifax and enlist as a soldier under the British government; and if the consideration or inducement of such agreement on the part of Cook was a promise from Wagner that Cook should receive $30 in advance, and $10 per month for his services as a soldier under the British government; or if a part or the whole of the consideration of that agreement, on the part of Cook, was the payment of the passage of Cook from New York to Boston, or the promise to pay such passage; or if the consideration of such agreement, or motive which led to it, was any promise of money or any other valuable thing by Wagner, and Cook, when he entered into such agreement, had, for such consideration, the intent to go to Halifax and to there enlist as

a soldier under the British government, then the offence, under the act of Congress, is complete, and Wagner must be deemed guilty. But the mere giving information, or the merely starting to go, is not sufficient. There must have been some inducement such as the court stated. If the testimony of Cook cannot be depended on, the prosecution must fail. It was for the jury to determine whether they would give credit to Cook on the part of the prosecution, or to the three witnesses for the defence; they cannot all speak the truth. If the jury were not satisfied beyond all reasonable doubt, they would give a verdict for the defendant. If they were satisfied, they should find him guilty.

The jury found the prisoner guilty.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I have the honor to inform you that I have indictments untried against various individuals, charging them with a violation of the law relative to foreign enlistments.

The proceedings which have been taken in this city, Philadelphia, and other places, have undoubtedly tended not only to the putting a stop to the enlistments for foreign service, but have also developed the connexion of the officials of the government of Great Britain, in this country, with a violation of our municipal laws.

The object of the prosecutions has been accomplished. It is evident that the parties against whom indictments have been found are but the instruments of others connected with a foreign power; and it has appeared to me that nothing can be gained by a further prosecution of individual cases.

I take the liberty of suggesting that I shall have your assent to stay further proceedings on the untried indictments.

I have the honor to remain, sir, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. C. CUSHING,
Attorney General United States.

ATTORNEY GENERAL'S OFFICE,
October 20, 1855.

SIR: I have the honor to acknowledge the reception of your two communications of the 16th and 17th instant, in which you inform me of the conviction of Joseph Wagner, accused of the offence of being engaged in unlawfully recruiting troops within the United States for the service of Great Britain, and request instructions as to other indictments of the same class still pending in your district.

These prosecutions were instituted, primarily, for the purpose of

arresting the continued perpetration of acts derogatory to the sovereignty and public honor, and contrary to the neutral policy of the United States.

The punishment of crime in these, as in all other cases of infringement of statute provisions, of whatever nature, was an object also, but in these particular cases a secondary one; for the individual misdemeanor of the parties implicated, whether they be citizens or foreigners, and whether private or official persons, is but a minor incident of the national indignity and wrong inflicted on this government by the foreign government, in whose behalf and for whose benefit they presume to violate the laws of the United States.

If, therefore, you find that what has thus far been done by you so judiciously and successfully suffices to maintain the public peace and vindicate the public justice within your district, you will make such disposition, as in your discretion seems best, of the remaining complaints against any persons who do not hold an official relation to the British government.

As to guilty persons of the latter description, whether yet under prosecution or not, their criminal acts stand on a different ground, and additional instructions regarding them will be forwarded to you in due time.

Such persons are not only indictable, in common with all others who violate the law of the land, but they are also violators of the international law, and subject to special consideration by the United States, unless disavowed and punished by their own government.

I have the honor to be, your obedient servant,

C. CUSHING.

Hon. JOHN MCKEON,
Attorney United States, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, November 1, 1855.

SIR: On the 16th October, ultimo, I had the honor to advise you of the conviction of Joseph Wagner, before Judge Ingersoll, upon an indictment for a violation of the neutrality laws of the United States.

Since then, the counsel for the accused expressed the desire to move for a new trial, and on that account sentence was deferred from day to day until the opening of the court this morning, when no motion in arrest being made, Judge Ingersoll sentenced Wagner to an imprisonment for two years, and to the payment of a fine of one hundred dollars. In passing sentence, Judge Ingersoll stated that he inflicted this punishment as a warning and example to others, and to prevent this country from being embarrassed, or running any risk of embarrassment, in the conflicts of other powers.

I have the honor to remain, sir, your obedient servant,

JOHN MCKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

Hon. JOHN MCKEON,
United States Attorney, New York.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, December 11, 1855.

SIR: Your letter of the 8th instant, requesting me to report, for the information of the President, a list of all the criminal complaints entered in this district against persons accused of recruiting for the service of Great Britain, was received this morning only.

I have the honor to enclose to you the required information, adding thereto the name of the complainant.

With great respect, your obedient servant,

JOHN MCKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General.

List of criminal complaints.

[Enclosure.]

Date.	Name of accused.	Name of complainant.
April 5, 1855	Adam Lutz	Grand jury.
May 3, 1855	Theodore Remy and Oscar Cromrey	Henrich Hoehmund.
May 3, 1855	Julius Parkus and Wilhelm Schumacher	Peter Oswald.
May 7, 1855	——— Wachter and ——— Belger	Max X. Miller.
May 7, 1855	——— Wachter	August Herbert.
May 8, 1855	——— Grambacher	Adolph Bishop.
May 11, 1855	Andrew Lutz	August Meichel.
May 16, 1855	——— Rozenbaum	Henry Kohler.
May 18, 1855	——— Wachter	Edward Schmidt.
May 18, 1855	John B. Bettinger	Edward Schmidt.
June 7, 1855	Philip Mellim and Albert Hahn	John Gutkung.
June 7, 1855	Philip Mellim	Adam Hehichs.
June 7, 1855	——— Kaufman, ——— Rosenbaum, and ——— Weise	Charles Dorble.
June 7, 1855	——— Kaufman and ——— Rosenbaum	Philip Hartegan.
June 12, 1855	George Spetzer	John Paulus.
June 13, 1855	——— Kartzlebin	H. Bekker.
June 13, 1855	do	Amred Tiel.

LIST—Continued.

Date.	Name of accused.	Name of complainant.
June 23, 1855	Milfort Von Casstensen, ——— Thomann, ——— Jorgensen	Jan. Tujeriah.
June 23, 1855	John Bougard	Augustus T. Leeberman.
June 25, 1855	Captain Schumacher, Oscar Cromey, Maximillian A. Thorman, Frederick E. M. Carstensen, Joseph Smolensky, Joseph Traska, Charles H. Stanley.....	Antonio Rosenbaum.
August 5, 1855	Joseph Wagner.....	Lawrence Berlin.
August 5, 1855	.....do.....	Abraham Cook.

SOUTHERN DISTRICT OF NEW YORK,
United States District Attorney's Office.

ATTORNEY GENERAL'S OFFICE,
March 26, 1855.

SIR: Information having been communicated to the President that military enlistments for the British service are going on in Philadelphia, he directs me to transmit to you the enclosed copy of a letter, of the 23d instant, to John McKeon, esq., attorney of the United States for the southern district of New York, and to request you to proceed against all parties engaged in such enlistments within your district.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
District Attorney of the United States, Philadelphia.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
140 *Walnut street, Philadelphia, March* 29, 1855.

SIR: Your communication of the 26th instant, but postmarked on the 28th, calling my attention to a rumor that certain parties were enlisting in the city of Philadelphia for the military service of the British government, and enclosing a copy of a letter, dated March 23, 1855, to John McKeon, esq., attorney for the United States for the southern district of New York, and directing me, by request of the President, to proceed against all parties engaged in such enlistments within this district, is this morning received.

In reply to your communication, I have the honor to report: that about ten days ago information was left at my and the United States marshal's office by some citizens of Philadelphia, who desired their names should be kept in confidence, that several persons were engaged in employing men to go to Halifax, under the pretext of

working on the railroad, but with the understanding that, when there, they were to enlist in the British service. I immediately determined to apprehend the parties, and, by the assistance and vigilance of the United States marshal for this district, succeeded in capturing, on the 27th instant, four persons who have been engaged in keeping open, under the name of a commission office, a recruiting station, and also fifteen persons who had engaged to go to Nova Scotia for the purpose of enlisting. A partial hearing has been had before the United States commissioner, and the parties have been held to bail for a further hearing on Saturday next.

* * * * * * * *

In connexion with the marshal of this district, who has already exerted much energy and care in the matter, I shall continue, in pursuance of the instructions contained in your communication, to apprehend and bring to punishment all who shall be found violating our neutrality or national sovereignty in this respect.

Very respectfully,

JAS. C. VAN DYKE,
U. S. District Attorney, Eastern District of Pennsylvania.

Hon. C. CUSHING,
Attorney General of the United States.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
140 *Walnut street, Philadelphia, September* 10, 1855.

SIR: There are now pending some twenty bills of indictment against various persons charged with enlisting persons for the war in the Crimea. I have fixed Monday next for the trial of all the cases, and am about sending for the witnesses.

* * * * * * I shall be pleased to receive your instructions at as early a day as possible.

I am, sir, very respectfully, your obedient servant,

JAS. C. VAN DYKE.

Hon. C. CUSHING,
Attorney General of the United States.

ATTORNEY GENERAL'S OFFICE,
September 12, 1855.

SIR: In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations:

Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence to which he may have access, and which can be useful to you.

I suggest the expediency of trying only a part of the cases now, especially if you fail to convict in some leading case.

But the most important consideration is this:

This government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspect of its acts—namely, the flagrant violation of our sovereign rights involved in them—has supposed it a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so: Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor.

But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has in so doing doubled the magnitude of the national wrong inflicted on the United States.

This government has done its duty of internal administration, in prosecuting the individuals engaged in such acts. If they are acquitted, by reason of a deliberate undertaking on the part of the British government not only to violate as a nation our sovereign rights as a nation, but also to evade our municipal laws, and that undertaking shall be consummated by its agents in the United States—when all this shall have been judicially ascertained, the President will then have before him the elements of decision as to what international action it becomes the United States to adopt in so important a matter.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

ATTORNEY GENERAL'S OFFICE,
September 17, 1855.

SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government.

It is known that instructions on this subject were given by that government to its officers in the United States. We are told by Lord Clarendon that those officers had "stringent instructions" so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violated the sovereign rights of the United States.

But, in the meantime, every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law, while, apparently, he must either have disobeyed his own government, or, in obeying it, have abused his con-

sular functions, by the violation of his international duty to the United States.

In these circumstances, it is deemed highly necessary that the British consul in Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he did on a previous occasion; that no letter of his be read, except in the due form of evidence; and that, if he has anything to say, he shall be put on the stand by the defence, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law or of international comity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer.

I have the honor to be, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
Attorney United States, Philadelphia.

OFFICE OF ATTORNEY U. S, EASTERN DIST. PENNSYLVANIA,
140 *Walnut street, Philadelphia, September* 27, 1855.

SIR: I have the honor to report that, in the case of the United States *vs.* Henry Hertz and Emanuel C. Perkins, charged with hiring and retaining persons to go beyond the limits or jurisdiction of the United States, with the intent to enlist in the service of her Most Gracious Majesty the Queen of Great Britain and Ireland, Hon. J. K. Kane this morning charged the jury in a learned and able opinion. The jury retired at 11 o'clock, and at 15 minutes after 11 returned with a verdict of not guilty as to E. C. Perkins, and of guilty as to Henry Hertz, on all the bills of indictment which I had submitted to their consideration.

I will transmit to you, in a few days, a full report of the whole case, as reported by James B. Sheridan, phonographic reporter.

* * * * * * * *

I am, sir, very respectfully, your obedient servant,

JAMES C. VAN DYKE,
Attorney for United States.

Hon. C. CUSHING,
Attorney General of United States.

ATTORNEY GENERAL'S OFFICE,
September 28, 1855.

SIR: I have received your letter of the 27th.

I congratulate you on the complete success of the prosecution.

* * * * * * * * * * *

I am, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

OFFICE OF ATTORNEY U. S., EASTERN DIST. PENNSYLVANIA,
Philadelphia, December 19, 1855.

SIR: Your communication of the 8th December, instant, was duly received. In reply, I have the honor to report that the annexed statement will show the different causes which have originated in this district against persons charged with enlisting for the military service of Great Britain. You will observe by that list that there are, apparently, five different warrants issued. The whole five may be properly classified into two sets of causes—first, those numbered 1, 2, 3, which resulted in the indictments against Hertz and Perkins; second, those numbered 4 and 5, which resulted in the indictments against Baron Vanschwatzenhorn and Emanuel Schuminski.

The recruiting business in Philadelphia was commenced about the first of March last, at an office, opened for that purpose, in Third street, near Walnut. When I first received information as to the object in opening this office, I directed inquiry to be made for the names of the parties who had charge of it. It was, however, soon found to be impossible to get the names of any of the parties; and, learning that persons by the name of Gilroy, Gallagher, and others, had enlisted at that office, a warrant was issued for their arrest, with a clause authorizing the marshal to arrest such other persons as might be pointed out as being engaged in the same business. By virtue of this warrant, the company, about leaving under the command of William Budd, was arrested, together with all the persons in the office. Among them were the defendants mentioned in case No. 2 of annexed schedule, except E. C. Perkins, who was, at the same time, arrested at his boarding-house. These parties being arrested, and having determined upon the propriety of making witnesses for the government of the defendants named in case No. 1, of course that case was abandoned.

Of the defendants mentioned in case No. 2, Hertz and Perkins were alone held for trial: the evidence showing clearly that Hertz was the principal offender, and that all the other defendants, except Budd and Perkins, were mere visiters at the office of Hertz. It being at that time impossible to show the real design of Hertz in sending

men to Halifax, except by the testimony of William Budd, I concluded to accept his offer to give testimony for the government.

The cause No. 3 arose out of a charge made against William Bucknall on the oath of William Budd. The evidence against him was, that he had brought to Philadelphia a number of handbills, and left them at the office of Mr. Hertz. The bills thus brought on were the printed bills with the arms of her Britannic Majesty, as published on page 15 of the report of the trial of Henry Hertz.

On *habeas corpus* before honorable John K. Kane, Wm. T. Bucknall was discharged; the judge holding the government to the proof of some overt act of enlistment within the jurisdiction of the United States, or of sending some person beyond the jurisdiction of the United States, knowing that the person so sent had the intention, when beyond such jurisdiction, to enlist, &c., &c. There was no proof of any act of this kind on the part of Mr. Bucknall, and he was discharged. It was the opinion of the court on this primary hearing to which the British press refers, when they say that Judge Kane had decided that the action of the British agents in the premises was not a violation of the municipal law of the United States. This, however, was not, at that nor at any subsequent time, the opinion of the court. The extent of the adjudication was, that the evidence at that hearing in relation to the action of Mr. Bucknall did not establish, as against him, a *prima-facie* case within the letter of the act of Congress.

Of the causes thus far referred to, indictments were sent to and found by the grand jury against Henry Hertz and E. C. Perkins. There were a number of joint bills against these defendants. Some of them have been tried, and convictions have been had of Henry Hertz, who is yet awaiting sentence.

E. C. Perkins coming within the ruling of Judge Kane, on the hearing of the *habeas corpus ex relatione* Wm. T. Bucknall, he was acquitted.

The full report of this trial you have already received in the printed pamphlet, copies of which have been transmitted to your department.

The causes marked 4 and 5, on the annexed schedule, were prosecutions against some persons at the time unknown, who had opened an office in the upper part of the city amongst the German population. The warrant No. 4 was issued, and under it the defendants mentioned in case No. 5 were brought in. The defendants were held for their appearance at the next term of the district court of the United States. Bills of indictment were found by the grand jury, and the defendants have, since that time, neglected to appear in court. These defendants acted under the directions of Mr. Hertz. They were procured by him to open their office for the recruiting business, after the office in Third street had been closed by the arrest of Henry Hertz *et al.* There have been no other prosecutions for violation of the neutrality laws growing out of enlistments for the British service.

I am, sir, very respectfully, your obedient servant,

J. C. VAN DYKE,
Attorney U. S. Eastern District Pa.

Hon. C. CUSHING,
Attorney General United States.

[Enclosure.]

Copies of entries from commissioner's docket.

No. 1.—United States *vs.* Gilroy, McGowen, Gallagher, *et al.*, charged on oath of E. W. Powers with violating neutrality laws.

1855, March 28, 1 o'clock a. m., *process exit.*

No. 2.—United States *vs.* E. C. Perkins and others by description, charged on oath of E. W. Powers with violating neutrality laws.

1855, March 28, 1 o'clock a. m., *process exit.*

Eo die process returned, and E. C. Perkins, Henry Hertz, Augustus Stahl, Barret Leob, John Jacob Boschart, and William Budd, brought up.

The following named witnesses were examined, viz: William Jones, Andrew McManus, Michael Gilroy, Wm. A. Leese, Dennis McLaughlin, and E. W. Powers.

Mr. Van Dyke moves that the defendants, except Augustus Stahl, be held for further hearing.

Each is held in the sum of $2,000, as follows:

E. C. Perkins, with Wm. Magill surety.

Henry Hertz, with Jacob Aub as surety.

Barnet Leob in $500, with Philip Lang as surety.

J. J. Boschart in $500, with N. Fend as surety.

William Budd is committed.

Mr. Van Dyke moves for commitment of the following witnesses: Augustus Qeese, John Riddlebury, Wm. Eckert, Charles Weaver, James McConnell, Philip Sibet, H. Kerstein, Robert Kern, Peter Muhr, Wm. Finley, William Jones, and James Johnson. *Commitments exit.*

March 31, 1855. Defendants are present, with counsel; Mr. Vaux for Wm. Budd.

Mr. Remak for Hertz, Leob, and Boschart.

Mr. Guillon for Mr. Perkins.

The following witnesses are examined, viz: Michael Gilroy, P. W. Conroy, H. B. Mann, Edward G. Webb.

The district attorney moves a continuance till Friday next at 12 o'clock.

Defendants Leob, Boschart, and Budd committed for want of *bail*, $500.

April 2. Defendants present. Wm. McGill sworn; John Jenkins sworn; F. M. Wynkoop sworn.

On motion of district attorney, Wm. Budd is discharged on his own recognisance.

Wm. Budd is called and sworn as a witness for the government.

April 16, 1855. Defendants present, with counsel.

After argument, Leob and Boschart are discharged. Perkins and Hertz held to answer at next term of court; bail fixed at $1,000 each. Bail entered.

Before Commissioner Heazlett.

No. 3.—United States *vs.* Wm J. Bucknall, charged on oath of *Wm. Budd* with violation of neutrality laws.

March 30. Affidavit filed, and process exit.

March 31. Defendant held D. Sherwood surety in $2,000 for hearing on Monday next at 10 o'clock.

April 2, 1855. Defendant present, with R. P. Kane, esq., as counsel, and held till Friday next for further hearing.

April 18, 1855. Defendant present; witness for government heard. Mr. Van Dyke moves that defendant be held to answer; R. P. Kane, esq., contra. Defendant held in the sum of $1,000 to answer at the next term of the court.

No. 4. United States *vs.* a person by description, charged with enlisting and hiring others to enlist.

April 2, 1855. Affidavit filed; process exit.

No. 5. United States *vs.* Baron Vanschwatzenhorn and Emanuel Schumunski, charged with enlisting men for the service of Great Britain.

June 1, 1855. Affidavit filed of J. A. Weidenbourned, and process issued.

June 2. Return C. C. Defendants present. The following witnesses examined, viz: Theo. Theiner, Wm. Krample, John Heaich, Simon Rosenbaund, Herman Tappert, Edward Golzken, William Winter.

Defendants held in $500 to appear at next court United States. On motion of the district attorney, the following witnesses are committed in default of bail: T. Theoner, H. Tappat, Ed. Gotzgen, Heaich, Winter, and Rosenbaum.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to report, for his information, a list of all the criminal complaints entered in your district against persons accused of recruiting for the service of Great Britain, giving the names of the parties, and the time of each alleged act.

I am, very respectfully,

C. CUSHING.

HUGH J. JEWETT, Esq.,
U. S. Attorney for Southern District of Ohio.

UNITED STATES ATTORNEY'S OFFICE,
Zanesville, December 18, 1855.

SIR: I am in receipt of your favor of the 8th instant.

The names of the parties charged by indictment, in the circuit court

for this district, for "recruiting for the service of Great Britain," are: 1st, Charles Rowcroft; 2d, William Hamilton; 3d, Robert B. McKay; 4th, John Turnbull; 5th, Daniel DeCorponay. Complaint was made against one Frederick Pashuer, but no indictment found.

About the 1st July last, the marshal and his assistants were advised that the abovenamed parties were violating the neutrality laws, by hiring persons to go beyond the jurisdiction of the United States, with intent to enlist in the service of Great Britain, and that, about the 7th July, such hired persons would be started for Canada.

On the morning of the day that the hired parties were to be despatched, and after they were seated in the cars, they, with the abovenamed parties, were arrested.

On the 14th July, a hearing was had before one of the commissioners of the United States, when the abovenamed parties, with the exception of DeCorponay and the man named Pashuer, were recognised to appear and answer the charge at the ensuing October term of the circuit court; at which term indictments were found, as before mentioned, and the cases continued for trial at the next (April) term of said court.

Very respectfully, your obedient servant,

H. J. JEWETT,
District Attorney.

Hon. CALEB CUSHING, *Attorney General.*

ATTORNEY GENERAL'S OFFICE,
January 10, 1856.

SIR: I have the honor to acknowledge the reception of your report of the 18th ultimo, respecting violations of the laws of the United States by agents of Great Britain within your district, and to say that what you have done in the premises is approved by the President.

I am, very respectfully,

C. CUSHING.

HUGH J. JEWETT, Esq.,
Attorney United States for Southern District of Ohio.

ATTORNEY GENERAL'S OFFICE,
December 8, 1855.

SIR: I am directed by the President to request you to communicate, for his information, a brief report of all the legal proceedings had in your district to repress or punish military recruiting for the service of Great Britain, including, especially, a list of persons indicted, with a statement in each case of the time of the alleged acts.

I have the honor to be, very respectfully,

C. CUSHING.

HON. BENJ. F. HALLETT,
United States Attorney, Boston.

OFFICE OF U. S. ATTORNEY,
Boston, December 24, 1855.

SIR: I have the honor to comply with your request, made by direction of the President, to communicate for his information a report of the legal proceedings had in this district, to redress or punish military recruiting for the service of Great Britain, including a list of the persons indicted, &c.

In May last, I received information that persons, apparently foreigners, were being sent by steamers and packet-vessels from Boston to Halifax, whose passages were paid at this place. I had communication with the collector, General Peaslee, who concurred with me in refusing passenger manifests when the purpose of such shipments was suspicious. Mr. S. S. Lewis, the agent of the Cunard line, acted very promptly upon my suggestions, and refused applications made to him from New York to take passengers of this description, and receive their passage-money on landing them at Halifax. I also received, anonymously, a printed copy of the handbill issued from the office of the provincial secretary at Halifax, March 15, 1855, inviting shipmasters to bring poor men, who were willing to serve her Majesty, and promising the cost of a passage for each man shipped from Philadelphia, New York, and Boston—signed Lewis M. Wilkins. The same bill or proclamation is printed in the trial of Henry Hertz, page 15. Satisfied that Boston was being made a depot for the shipment of men designed for enlistment at Halifax, in evasion and violation of the neutrality acts, I caused the following arrests to be made:

June 6, 1855.—Charles Green, and five other laboring men. Philip Kaufmann, an agent in bringing men from New York, to be forwarded to Halifax.

June 8.—John M. Schwarrer, who kept a German hotel in Boston, and boarded the intended recruits.

June 9.—Louis Celegi, another agent from New York, Dr. Keilbach and Gastinson, Germans, were arrested.

June 19.—In consequence of disclosures by some of the above parties, who voluntarily became witnesses, a warrant was issued against C. H. Stanley, of the consular office at New York, in order to retain the witnesses against him, who were sent to New York to Mr. McKeon, under the statute for that purpose.

June 23 *and* 25.—Farley, alias Grant, and Caleb Stewart, were arrested.

June 28.—Upon information from the collector at Edgartown, (Mr. Norton,) and by the energetic action of Capt. Clark, of the revenue-cutter "James Campbell," I caused the arrest by the marshal, on board the British brig "Buffalo," of four persons, appearing to be officers, viz: Louis Kazinski, a Pole, calling himself *Count;* Hugo Lippi, a German; Richard Rudelins, an Italian; and H. Langlois, a French surgeon, together with 21 men under their control, bound to Halifax. By my request, Capt. Clark brought these persons to Boston in his cutter, under arrest of the marshal, from Tarpaulin cove, where they were found.

All the above persons, forty in number, (except Mr. Stanley,) were

brought before Mr. Commissioner Woodbury, and their cases repectively investigated. Philip Kauffman, Louis Celegi, Schwarrer, Kazinski, Hugo Lippi, Rudelius and Langlois, were held before the grand jury, and the other persons retained as witnesses, or discharged. The grand jury found bills against all except Kauffman and Schwarrer, who became witnesses.

These examinations distinctly proved a concerted arrangement between the colonial officers at Halifax and the British vice-counsul at New York, to procure men in the United States, and ship them from Boston to go to Halifax, there to enlist in the foreign legion. Most of the men were deceived by promises of work on railroads or docks at Halifax, or other false pretences of employment. The agents who enticed the men were instructed in most cases, so as to evade the laws.

Kauffman was employed at New York to bring men on to Boston by Count Kazinski, who, as is now proved, was under the orders and pay of Mr. Stanley at New York, and was promised a colonel's commission in the foreign legion. Kauffman and Celegi brought to Boston at different times fifty men, who were shipped to Halifax. The packets of Clark, Jones, & Co., and of Sprague, Soulé, & Co., of Boston, transported large numbers of men, whose passages were paid through Mr. Howe, formerly colonial secretary. Mr. A. Winsor, who received passage money of Hertz at Philadelphia, March 25, was a member of the last named firm, and testified that he also received passage money in Boston, and forwarded men who were sent to Boston from New York by Max F. O. Strobel. Sixty men were shipped in Sprague, Soulé, & Co.'s vessels, who were forwarded by Strobel; and, at another time, thirty men were despatched in the barque Halifax, belonging to Clark, Jones, & Co. These ship-owners and their agents here, though grossly violating the spirit of the law, could not be brought under its provisions of hiring and retaining. They desisted, however, promptly and honorably, after the disclosures made before the commissioner and grand jury in the investigations. It was also proved that Mr. Howe, the colonial agent, had been three several times in Boston, contracting for the passages of recruits, boarding and selecting men and paying money to agents engaged in procuring them; but he could not be found after these disclosures, to be arrested. Mr. Edward Whitney, of the firm of Sprague, Soulé, & Co., testified that Howe advanced to him $192 for passages, and that he, Howe, told Whitney that he had taken legal advice, and that it was lawful to ship the men to Halifax. A person named Jacoby procured at New York and brought to Boston a number of squads of men under the pretence that they were to enlist in the United States service. I never found but four men—three Frenchmen and one German—who admitted they intended to enlist as soldiers, and they were hired in New York. All the others declared they had been deceived, though many of them had previously stated their intention to enlist.

Two men, George Hashren and John Hock, had been to Halifax to enlist, and were there rejected for physical defects, and sent back to Boston. Their testimony proved that the recruits sent from Boston were expected, and were received by the lieutenant governor of

Nova Scotia and the officers of the foreign legion, and were examined and enlisted.

In the district court of the United States, before Judge Sprague and a jury, from July 16th to the 21st, 1855, I tried the indictments found against Louis Kazinski and the three other officers, viz: Hugo Lippi, Rudelius, and Langlois, arrested on board the British brig Buffalo. The defendants were acquitted under the ruling of the judge, that there was not sufficient evidence of a hiring and a retaining of the men in this district, with their consent and concurrence in this district, to go to Halifax, there to enlist as soldiers. It was fully proved that Count Kazinski had the control of the men on board the brig Buffalo; that he forcibly retained and refused to land some of them, who begged for their discharge; that he declared he had telegraphed to Halifax the number of men he had in the brig Buffalo, and must report them all at Halifax, and if the British officers there would release them after they got to Halifax, they would be sent back. But the consent of the men to be hired or to enlist while in the district of Massachusetts could not be proved.

The facts disclosed gross deception practised upon the men by the British officers and agents concerned, and an elaborate combination to evade the neutrality laws, and yet secure the men at Halifax.

Another indictment against Louis Celegi was also tried with the same result. But the effect of these proceedings and trials, and of the vigilance instituted to detect further attempts to evade the laws, was to break them up entirely in this city.

Subsequently, on the 9th of August, 1855, I caused the arrest of Joseph Wagner, and, upon his examination, sufficient evidence was obtained to implicate him in an actual hiring of men at New York. I accordingly caused Wagner and the witnesses to be removed to New York by the marshal, where he was proceeded against by Mr. McKeon, and he was tried and found guilty.

In the meantime I communicated to the United States attorneys, Mr. McKeon, of New York, and Mr. Van Dyke, of Philadelphia, all the information drawn out by the examinations here of the violations of the laws in those cities. On the 22d of June, 1855, I communicated to the Hon. Secretary of State, Mr. Marcy, the substance of the proceedings here.

* * * * * * * *

The counsel who defended Louis Kazinski and his associates in the trials here (Messrs. Andrew and Burt) were retained and paid a $500 fee by Mr. Stanley, of the British consulate at New York. Kazinski himself, who has recently been in Boston, has verified this statement to me; and also that, at the time he took charge of the brig Buffalo, he held the written instructions of Mr. Stanley, and had the control of the vessel.

* * * * * * * *

I instituted the above proceedings without any direct instructions to that effect, but as within my duties as a prosecuting officer, and in the confidence that the President, as all his acts before and since have demonstrated, was earnestly desirous to maintain the good faith of the United States by a strict and impartial enforcement, in all cases,

of the neutrality laws; and I trust that my endeavors to enforce an observance of those laws in this district have met his approbation and that of the Attorney General.

Very respectfully, your obedient servant,

B. F. HALLETT,
United States Attorney.

Hon. C. CUSHING,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
January 17, 1856.

SIR: I am directed by the President, in acknowledging the reception of your communication of the 24th ultimo, to signify his entire satisfaction with all the steps taken by you in regard to enlistments for the military service of Great Britain within your district.

I am, very respectfully,

C. CUSHING.

BENJ. F. HALLETT, Esq.,
Attorney U. S., District of Massachusetts.

THE TRIAL OF HENRY HERTZ ET AL.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA *vs.* HENRY HERTZ AND EMANUEL C. PERKINS,

Charged with hiring and retaining persons to go beyond the jurisdiction of the United States, with the intent to enlist in the British foreign legion, for the Crimea.

SEPTEMBER 21, 1855.—Before the Honorable JOHN K. KANE.

The defendants were arraigned on several bills of indictment, to which they severally pleaded *not guilty*.

A jury is called, and sworn or affirmed as follows:

1. Jeremiah Eyerly, carpenter, Front street, below Catharine, Philadelphia.
2. John Baird, marble mason, Spring Garden street, above 13th, Philadelphia.
3. Joshua Fry, gentleman, Centre P. O., Lehigh county, Penn.
4. John G. Hinsell, collector, Crown street, above Vine, Philadelphia.
5. Michael D. Kelly, tailor, Division street, below 12th, Philadelphia.
6. Cornelius McCauley, manufacturer, No. 119 Lombard street, Philadelphia.
7. John F. Parke, farmer, Radnor P. O., Delaware county, Penn.
8. George Reese, gentleman, Race street, above 3d, Philadelphia.
9. John Stewart, farmer, Carlisle, Cumberland county, Penn.
10. John Wilbank, innkeeper, Rugan street, above Callowhill street, Philadelphia.
11. Joseph Lippencott, carpenter, Vernon street, above 10th, Philadelphia.
12. Charles R. Able, manufacturer, No. 478 North Fourth street, Philadelphia.

The indictments were similar in their character, and related to the hiring of different persons.

The following is a copy of one of the indictments:

In the District Court of the United States in and for the Eastern District of Pennsylvania, of May sessions, in the year of our Lord one thousand eight hundred and fifty-five.

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

First count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do present: That Henry Hertz, late of

the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, in the district aforesaid, and within the jurisdiction of this court, with force and arms, did hire and retain one William Budd to enlist himself as a soldier, in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

Second count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States and of this honorable court, with force and arms, did hire and retain William Budd to enlist and enter himself as a soldier in the service of a foreign prince, state, colony, district, and people, to wit: the service of her Most Gracious Majesty, the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Third count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Fourth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit; the service of her Most Gracious Majesty, the

Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Fifth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people. The said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of any foreign prince, state, colony, district, or people, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of the arrival within the United States of such vessel of war, letter of marque, or privateer was fitted and equipped as such; and the said William Budd, so hired and retained, not being a subject or citizen of the same foreign prince, state, colony, district and people, transiently within the United States, enlisting and entering himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, the United States being at peace with such foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Sixth count.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations, do present: That Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit: in the service of her Most Gracious Majesty, the Queen of Great Britain and Ireland. The said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of the said Queen of Great Britain, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer,

which at the time of its arrival within the United States was fitted and equipped as such ; and the said William Budd, so hired and retained, not being a subject or citizen of her Most Gracious Majesty, the Queen of Great Britain and Ireland, transiently within the United States, enlisting and entering himself to serve the said Queen of Great Britain, on board such vessel of war, letter of marque, or privateer, the United States being at peace with the said her Most Gracious Majesty, the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

JAMES C. VAN DYKE,
Attorney for the United States
for the Eastern District of Pennsylvania.

J. C. Van Dyke, esq., attorney for the United States, opened the case on the part of the prosecution, in substance as follows :

May it please the court—gentlemen of the jury : It is a fact which will be judicially noticed by this court and jury, that during the year 1855, as for some time previous, the Crimea has been the site of a sanguinary and melancholy conflict between some of the most powerful nations of the globe.

That conflict has been conducted principally by the British, French and Turks on one side, and by Russia on the other, and has become part of the political and legal history of nations.

It is not important for us to inquire into the cause of this conflict, nor is it necessary for us to trace the various military or political manœuvres by which it has been conducted, much less to endeavor to ascertain or speculate as to the probable result of an attack on the part of the allies, producing those misfortunes to the British government which they have endeavored to retrieve by a violation of law in this country.

We do not deem it in any degree important to the American people that the combined forces of southern Europe should be successful against a single nation of the north in maintaining her asserted rights. In this free and republican country, the home ordained by Providence for the oppressed of all nations, we have very little to do with the struggles for supremacy and power by the different crowned heads of the Old World. The various schemes which have been adopted for the support of a balance of power by the potentates of Europe never have, and in my opinion never will advance those republican institutions which it is our pleasure and duty to foster. On the contrary, those combinations which have been formed in support of such balance have at all times been made the instrument of retarding in Europe the progressive democratic spirit of the age, and of binding the masses more firmly beneath the yoke of an overgrown and decaying aristocracy ; and although the popular pulse in this country is manifestly against all war which originates in the desire to perpetuate or extend any other than a republican form of government, yet a proper regard for our national integrity forbids us to tolerate, on the part of those residing among us, any intermeddling in the disputes of other nations, where those disputes do not interfere with or concern the le-

gitimate objects and manifest destiny of our own wide-spreading institutions. Except in such cases, our policy is peace; and we should endeavor to keep ourselves free from all political connexions which might in any way involve us in the conflict among European powers—not so much for the reason that we are not ever ready to defend our rights by an effectual resort to arms, but because our implied and treaty obligations require us firmly and faithfully to maintain an impartial neutrality.

By prudence and an entire good faith in observing the position of an independent neutral nation, we increase our own happiness and prosperity at home, and secure to ourselves the right to demand a proper respect abroad.

A neutral nation cannot with propriety interfere with any matter of dispute between foreign belligerent parties, nor can it furnish aid to either, without justly incurring the danger of the displeasure of the other. The propriety of a nation not directly involved in an existing war, in maintaining this position of strict impartiality, is manifest. It is protection and preservation both to our citizens and to our property.

This has been the doctrine of all neutral powers; and although for centuries disregarded by European governments, in violation not only of the well-settled laws of nations, but also of highly penal statutes, it has ever been regarded by American statesmen as a cardinal element in American diplomacy.

The benefits of a strict observance of neutrality are too great and too many to be enumerated in the trial of the issue which I am about to present to you. Suffice it to remark, that so great are those benefits, that from the beginning of our government we have considered it the duty of every resident in this country, whether minister plenipotentiary, consul, or private citizen, to inquire into the character and extent of our laws upon this subject, and carefully to observe them.

No one residing here has a right to violate the national sovereignty of the United States, by setting those laws at defiance, by the perpetration of acts derogatory to our character as an independent, impartial, neutral nation; and any neglect of this duty renders him amenable to the laws of the land. As an example of the early feeling of our government upon this subject, Mr. V. read the proclamation of President Washington, in 1793, in relation to "the war then existing between Austria, Prussia, Sardinia, Great Britain, and the Netherlands, on the one part, and France on the other; stating that the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers.

"I have, therefore, thought fit, by these presents, to declare the disposition of the United States to observe the conduct aforesaid towards those powers respectively, and to exhort and to warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may tend in any manner to contravene such disposition.

"And I do, hereby, also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture, by the laws of nations, by combatting, aiding, or abetting

hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all such persons who shall, within the cognizance of the courts of the United States, violate the laws of nations, with respect to the powers at war, or any of them."

The justice of the principles contained and proclaimed in this message no doubt produced, in 1794, the passage of the first law for the protection of our neutrality.

That act is the same, in its principal features, as the English statute 9 Geo. II, ch. 30, sec. 2; and 29, ch. 17, sec. 2.

Mr. Van Dyke then referred to the various acts of Congress which had at different times been enacted for the purpose of imposing punishment upon those who should violate the national sovereignty of the United States, by interfering with the rights of belligerents.

The act of June 5, 1794, *ch.* 50, punishes any citizens of the United States for accepting and exercising a commission to serve in any war, on land or at sea, in the service of any foreign prince or state: and prohibits any person, within the territory or jurisdiction of the United States, enlisting or entering himself, or hiring or retaining another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with the intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a mariner, or seaman, on board any vessel of war, letter of marque, or privateer; and forbids the fitting out, or attempting the fitting out of ships-of-war within any of the waters of the United States, or procuring the same to be done. This act also forbids any person, within the territory of the United States, increasing or augmenting, or procuring the increase or augmentation, or knowingly being concerned therein, of the force of any ship-of-war, cruiser, or other armed vessel of any foreign prince or state, or belonging to the subject of any foreign prince or state, the same being at war with any other foreign prince or state with whom the United States are at peace.

Sec. 5 prohibits all persons, within the territory or jurisdiction of the United States, to begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace.

Sec. 6 makes the offence indictable in the district court of the United States.

Sec. 7 authorizes the President of the United States to employ the armed forces of the United States to prevent the commission of the offences declared against by the neutrality laws of the United States.

Sec. 8 authorizes the President to use the armed forces of the United States to compel the departure of any armed ship of any foreign prince, in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain in the United States.

This act was to continue in force for two years, or until the next

Congress thereafter. In 1797 the act was further extended for the period of two years.

On the 24th April, 1800, Congress, by an enactment, made the act of 1794 perpetual.

The next enactment was March 3, 1817, ch. 58, by which new punishment and penalties were imposed for a violation of the provisions of the act of 1794.

Mr. V. said he referred only to the substance of these acts of Congress, without delaying the court to read from the books, because, having been repealed by the law under which the present bills of indictment are framed, they are important for two reasons only.

1. They show in a most conclusive manner the policy of our government in maintaining a strict neutrality on the international affairs of European powers.

"Peace with all nations, entangling alliances with none," has ever been the motto, not only of the government, but of the people of this country.

By adopting and strictly observing this just and fair policy, the United States has in times of intense political excitement, and bloody and disastrous warfare in other countries, cultivated peace with all nations, and secured at all times national repose and commercial prosperity at home, and respect abroad. By fulfilling, with a strict impartiality, our neutral responsibilities towards belligerent powers, we have in times past avoided the disasters which have befallen other free governments; and by continuing so to do in the future, we will continue able to present to mankind an example of republican integrity worthy of imitation by the civilized world.

2. They are important: because, from their peculiar similarity with the act of 1818, under which these defendants, now on trial, are indicted, we are enabled more fully to comprehend the meaning of the several judicial constructions which have been given to them, especially in cases of prize, and to ascertain the bearing of such construction upon the act of 1818.

In 1818 the Congress of the United States felt the importance of remodelling the law upon the subject of American interference in disputes between foreign nations, and in an act passed on 20th April, which repeals all former laws upon the subject, adopted a most wholesome law, which, though varying somewhat from former enactments, is the same in all essential points. Mr. Van Dyke referred to this act at length.

The defendants are indicted under the provisions of the second section of this act. The grand jury have found several bills of indictment against them for the various violations of this law, which seemed to them susceptible of the most easy proof.

It will be observed that the crime mentioned in this section consists in the doing of various acts. You will be instructed by the court that you must be satisfied of certain propositions which it will be my duty to submit to your consideration.

First. It will be necessary for the government to satisfy you that the act complained of was committed within the territory of the United States.

Second. That the defendants, or either of them, enlisted or entered himself, respectively, in the service of a foreign prince, state, colony, district or people, as a soldier, or as a mariner or seaman on board any vessel of war, letter of marque, or privateer.

Third. That the defendants, or either of them, hired or retained another person to enlist or enter himself in such service.

Fourth. That the defendants, or either of them, hired or retained another person to go beyond the limits or jurisdiction of the United States, with the intent to be enlisted or entered in such service.

Upon the first point I remark: that if from the evidence you are satisfied that the acts complained of were not committed within the limits of the United States, and also within the limits of the jurisdiction of this court, which is bounded by those counties forming the eastern district of Pennsylvania, it will be your duty to acquit both the defendants on all the bills now laid before you.

Upon this point, however, gentlemen, I think you will have no trouble. The evidence will be conclusive that whatever was done by the defendants was done within the eastern district of Pennsylvania.

Upon the second point you are relieved from any inquiry, there being no charge in the indictments that the defendants, or either of them, enlisted himself in any foreign service.

Having found, however, the first point in favor of the government, your investigations will be directed to the third and fourth points of inquiry, viz: Did the defendants, or either of them, at the various times specified in the various bills under consideration, hire or retain any or all of the persons mentioned to be enlisted or entered in a foreign service; or did they hire or retain any or all of the persons mentioned in these bills to go beyond the limits of the United States, with the intent to be enlisted or entered in such foreign service? If either, or both, then you will find them, or either of them, guilty on such counts in the indictments as are applicable to the facts upon which you base your conclusions.

The court, I am of opinion, will inform you that the intent mentioned in the act refers to the intention of the party enlisted, hired, or retained. Not that such an intent must be an absolute determination to enlist when arriving beyond the limits of the United States; but the crime charged against the defendants being the hiring of some other persons, which other persons must have the intent, it is sufficient ground for conviction, if, from all the testimony, you are satisfied that the defendants, at the time they so hired or retained any other person, believed it to be the bona-fide intention of the person so hired or retained to enlist or enter such foreign service when he should arrive beyond the limits of the United States. Upon this point, however, gentlemen, you will have no difficulty upon many of the bills, as I shall be able to prove to your entire satisfaction—first, that the defendant Hertz thought the recruit had such intention; and secondly, that the recruit did, in fact, agree to depart from our jurisdiction with intent to enlist.

Having thus briefly reviewed the political policy of our government, and the law applicable to the present prosecution, permit me to call your attention to the facts as I shall be able to present them to your

serious consideration. So far as applicable to the prosecution, they are easily understood.

I have said that the war in the Crimea was conducted by the British, French, and other nations, as allies, against the single power of Russia. I have said that the consequences of that war had been disastrous to the besieging parties, and that the signs of the times indicated a still more humiliating fate. The English army having met the most serious losses, the government of Great Britain, in direct violation of her duty towards us, and with a design of misleading those residents of the United States who did not fully comprehend the nature of our laws, devised a plan for the purpose of partially regaining the position and standing which, in the absence of the proper exercise of the advanced military experience of the age, they had lost.

A plan for this purpose was adopted and attempted to be carried out, by his excellency John F. Crampton, the minister plenipotentiary of her Majesty, assisted by several agents of the British government, within the territory and jurisdiction of the United States; and I think you will be satisfied that Mr. Crampton thus acted with the knowledge and approbation of his government. This high functionary of that government made contracts and agreements with certain persons, known in this country as able and efficient officers in the various conflicts which have recently taken place on the continent of Europe. The parties thus contracted with were to commence a system of recruiting men within our territorial limits.

There will be examined before you two or three individuals who were engaged in carrying out this plan, and who on various occasions had interviews with Mr. Crampton, and with him adjusted and perfected the programme for this enlistment. Mr. Howe, Sir Gaspard le Marchant, Governor of Nova Scotia, Mr. Wilkins, his secretary, Mr. Barclay, the British consul at New York, and other British representatives in power, also assisted in and directed this flagrant violation of our law.

In the perfecting of this general design, Mr. Howe came to Philadelphia, and endeavored to make an arrangement with Colonel Rumberg, well known here for many years as one of the publishers of the *German Democrat*, and now known as one of the editors of the *German Adopted American*, published in Philadelphia and Pottsville. Mr. Howe brought to this gentleman a proclamation, which will be submitted to you, calling for enlistments within the United States to serve in the foreign legion, then forming at Halifax. Colonel Rumberg was at first pleased with the proposition, and felt disposed to lend his aid in its furtherance; but afterwards, upon being informed that such enlistments were a violation of the laws of the United States, and that he might get into difficulties, he abandoned it. He however translated the proclamation for Mr. Howe, and, having met Mr. Hertz and Mr. Howe together at Jones's hotel, he published the proclamation in his paper for Mr. Hertz.

Arrangements were made by Mr. Howe and Mr. Crampton with the defendant Hertz, who, for them, undertook the enlistment of men at his office, which he opened for that purpose, at 68 South Third

street. Mr. Hertz published and paid for the proclamation for these recruits in various newspapers. That proclamation was signed by Lewis M. Wilkins, secretary of the provincial government of Nova Scotia, and calls upon persons to enlist in the foreign legion.

While this matter was going on, Captain Strobel was either sent for by Mr. Crampton, or came himself to him—I do not recollect which—and entered into negotiations with him for carrying on this business. Mr. Crampton told Strobel that he had written to his home government for the purpose of learning what arrangements should be made in this country for enlisting soldiers, and had not yet received a reply; but as soon as he received it he would let him know. A short time afterwards he wrote him a note, informing him that he had received the reply, and was prepared to enter into the proper arrangements for carrying on the enlistment. They met together, and Mr. Strobel prepared for him a plan which he had devised for the purpose of recruiting men in the United States, and taking them beyond our borders to serve in the "legion." The plan, with some alterations, was adopted by Mr. Crampton, and Mr. Strobel was sent through the large cities of the United States to establish various recruiting offices. I give the most prominent facts, merely running over them as briefly as possible. After having first gone to New York, he came to Philadelphia and met Mr. Hertz, who was then engaged enlisting men in this city, and who had a number already enlisted. Mr. Hertz had, up to the 24th of March, one hundred men, whom Mr. Strobel was to take to Halifax; and on the 25th of March they sailed in the steamer Delaware bound for that place. These men were enlisted at Hertz's office, No. 68 South Third street, whither the advertisements had called them. Mr. Strobel saw them there enlisted, and to a certain extent assisted in enlisting them; and on Sunday, the 25th of March, he sailed in the steamer Delaware with about seventy-five men, the rest having deserted between the time of hiring or engagement and the time of sailing. These men were taken to Halifax by Captain Strobel, and there examined and attested; were placed in the barracks, and a short time afterwards sailed for Portsmouth, England. On the following Wednesday Mr. Hertz had made an arrangement to send another company of recruits from the United States, in charge of a person named William Budd, a very intelligent and good officer, whom he had also engaged to go beyond the limits of the United States, with the intent of entering into the British service. The officers of the United States having learned that this recruiting was going on, devised, in pursuance of directions from the administration at Washington, the means for stopping it; and after Mr. Budd, with his company, had embarked from Pine street, on board the steamer Sanford, being furnished by Mr. Hertz with free tickets for a passage to New York, where they were to get others from Mr. Howe to take them the rest of the journey, and had progressed as far as the navy yard, the U. S. marshal, having a warrant, went on board and arrested the whole company and brought them to Philadelphia, where the parties who had assisted them, together with the papers in their office, were taken in charge.

That Mr. Hertz was engaged in wilfully violating the law is proved

by several circumstances connected with the case. He had the proclamation, in the shape of a handbill, printed and posted in the streets of Philadelphia, and paid for publishing the proclamation in the *Ledger* and *Pennsylvanian*. He took an advertisement to the German *Democrat*, which called for recruits for the foreign legion, and had an office opened, and individuals there to assist him in taking down the names of those who applied, and examining them to see if they would be received. He there told them that they would get thirty dollars bounty and eight dollars a month, and also stated that various persons would receive commissions. He also gave them tickets for their passage to New York, some of which tickets were taken from those arrested, and will be produced. During the whole of his enlistment, the defendant Hertz was actively engaged in procuring men for that purpose.

Arrests having been made in all parts of the United States, of persons engaged in this business, the representatives of her Majesty in this country became somewhat alarmed as to the results. Mr. Crampton then made arrangements with Mr. Strobel and one Dr. Ruess, who met him at Halifax, and devised plans as to the manner in which the recruiting was thereafter to be conducted in the United States; and on the 15th of May, or thereabouts, the whole programme of proceedings was changed by his excellency the British minister and Sir Gaspard le Marchant, governor of Nova Scotia. They then devised a new plan of violating the national sovereignty of the United States, and of evading our laws enforcing neutrality—not a very praiseworthy occupation within the borders of a friendly government, for the dignified representative of the self-styled mistress of the seas; but it was an occupation which, if permitted by our people, might have destroyed the most amicable and friendly relations which exist, and which I trust may ever continue, between the United States and the Russian government. Mr. Crampton and his associate representatives of Great Britain on this continent gave directions to Captain Strobel to repair immediately to all the recruiting offices in the United States, and order the persons engaged in those offices to adopt the system which they had prepared for the guidance of the recruiting agents; giving to these agents at the same time a caution, that should they be unsuccessful in evading the laws and eluding the authorities of the United States, they could hope for no protection from the British government; that is, the British government was willing to accept the advantage of the successful criminal conduct of all their minister and his recruiting agents, but refuse to defend or assist those agents if they should be so unfortunate as to be detected. Honorable and generous Great Britain! and oh! most faithful British Ministers!!

The ruse then adopted was to send men to Canada and Halifax, under the pretence of engaging them on the railroad, and when there to enlist them in the army. For the purpose of carrying out this object, regular written instructions were given by Mr. Crampton to Mr. Strobel, who, with Dr. Ruess and other officers, started in company with Mr. Crampton to the United States. Some of these officers afterwards left the service of her Majesty, and, as was their duty, have

since expressed their willingness to disclose all their knowledge in support of the prosecutions which have been commenced.

The active connexion and co-operation of nearly all the representatives of her Majesty in this general design, will be made clear to you by unimpeached testimony. I think I can say with confidence that his excellency John F. Crampton, minister extraordinary, &c.; his excellency Sir Gaspard le Marchant, governor of Nova Scotia; his excellency Sir Edmund Head, governor of Canada; Sir Joseph Howe; Lewis M. Wilkins, provincial secretary of Nova Scotia, and at least one British consul, directed this course of conduct. All these gentlemen, it will be in evidence to you, have, with Mr. Hertz, the defendant, taken an active part in directing the commission of the crime charged; and whether or not by a bold attempt to disguise their real object, is a matter of very little importance.

The oral testimony of the witnesses will, in some most material and important facts, be corroborated by written documents. I shall be able to produce to you some five or six original letters and notes of Mr. Crampton, and also the original instructions to the agents, as to the mode in which the enlistments were to be conducted in the United States. You will also have in evidence the original proclamation or advertisement in the handwriting of Sir Joseph Howe, inviting persons to enlist in the foreign legion, as well as several other letters and papers of considerable importance on the points in issue.

I take it, gentlemen, briefly to conclude what I have to say to you at this stage of the proceedings, that if I show that either or both of these defendants, in conformity with this general design of the British government, were engaged in thus enlisting, or hiring or retaining any person to be enlisted, I have made out a clear case. I am free to admit that the evidence against one of the defendants is not of the most conclusive character, he not being known as being positively engaged in enlisting, hiring, or retaining any particular person, although he was in talking and giving directions on the subject. The court will instruct you how far a person must go in order to commit this crime, and whether the fact of Perkins sending a man to Hertz, for Hertz to enlist him, constituted a crime on the part of Perkins.

I shall prove to you distinctly, by unimpeachable evidence, that all the persons mentioned in all of these bills have been enlisted by the defendant Hertz, in the first place in the service of her Most Gracious Majesty the Queen of Great Britain, and, if not enlisted within the jurisdiction of the United States, that he has hired and retained each and every one of these individuals, and many more, to go beyond that jurisdiction, to wit: to Halifax, in Nova Scotia, for the purpose of being there enlisted in a foreign legion destined for the Crimea, to engage in the battles of the allies. If I prove these facts, I can safely ask at your hands a verdict against him for one of the most flagrant violations of the national sovereignty of this country which has ever been known to have been perpetrated within its borders. First, a violation of our law; second, a violation of the confidence reposed in a high representative functionary; and thirdly, a violation of the sympathies, and a national insult to the sentiments and the feeling of our people.

Max F. O. Strobel, sworn.

After the witness was sworn, Mr. Remak desired the district attorney to state distinctly what he intended to prove by him.

Mr. Van Dyke said he had no objection to doing so, but he thought it would occupy too much time.

Judge Kane said that he preferred that the witness should be examined in the first instance, without being distinctly apprized of all the facts about which he was to testify.

Examination by Mr. Van Dyke.

Q. Of what country are you?

A. I am from Bavaria.

Q. Have you been in military service?

A. Yes, sir, in the Bavarian service, in the artillery.

Q. Have you ever been in war?

A. Yes, sir, I have joined the revolutionists in Bavaria.

Q. In 1848?

A. During the revolution in the year 1849.

Q. How did you happen to leave the service?

A. Well, we were defeated, and obliged to leave Baden and go into Switzerland; then I stopped there, and travelled through France and England until 1851. On the 13th of May, 1851, I embarked at Havre and came to this country, and arrived here in June, 1851. On the 23d of June, 1851, I came to this country; I was in New York several weeks, and then went to Washington, and there got employment in the Coast Survey Office. I was there until 1853, when I went out with the expedition to Oregon, under Governor Stevens. I went up with him to Minnesota; I left his party out on the plains on Red river, and came back to Minnesota on the 7th of September, 1853, and came down to St. Louis, and started with Col. Fremont on his winter expedition to San Francisco about this great Pacific railroad: I have been assistant topographical engineer of Col. Fremont; I left San Francisco on the first of May, 1854; I crossed the isthmus and came back with our Indians, and brought them up to Kansas again. From there I went back to Washington city, where I finished the maps for the works of Col. Fremont, which I suppose are now before Congress.

Q. When did you finish the maps?

A. I finished them in the end of August, 1854. I then received a letter of recommendation from Mr. Benton to the different directors of railroads to secure me a position as engineer. I went with this recommendation or letter of introduction to Missouri. I took sick there, and was obliged to leave the valley of the Mississippi and come back to Washington city. When I came back to Washington I was engaged in the Pacific railroad office, at that time established in Washington, and was at work there until the first of February. In the end of January I saw Mr. Crampton, and received from Mr. Crampton the reply.

Q. State the whole conversation which took place between you and Crampton.

A. I received from Crampton the reply that he could not tell me

at that moment what could be done. I said to Crampton that I believed in this very time, as it was in the winter time.

Q. Last winter?

A. Yes, sir; that many people were out of work in New York and other places, and it would be very easy to raise men for this "foreign legion" that the English Parliament had agreed to establish. Crampton told me that he believed so himself, but at that moment he had no orders from the home government to do anything in the matter, and that he would let me know as soon as he received any communication from home. A few days afterwards, I suppose on the 28th of February, I received a letter from Mr. Crampton.

Q. Is this the letter?

A. Yes, sir.

Q. And this the envelope in which it was enclosed?

A. Yes, sir.

The letter was here read in evidence as follows:

"WASHINGTON, *February* 4, 1855.

"SIR: With reference to our late conversation, I am now able to give you more precise information in regard to the subject to which it related. I remain, sir, your obedient servant,

"JOHN F. CRAMPTON.

"Mr. MAX STROBEL."

After receiving this letter, I went to see Mr. Crampton the next morning; Mr. Crampton told me that he had received letters from home, and that he was willing now to raise men here in the jurisdiction of the United States for a British foreign legion, which should be established either in Nova Scotia or in Canada.

Q. Did he use the words "within the jurisdiction of the United States?"

A. Yes, within the jurisdiction of the United States.

Q. He used those precise words, did he?

A. Yes, sir; but he was not sure at that time whether the main depot should be at Halifax or in Canada, and he was obliged to make arrangements with the governor general of Canada. At the very same time he gave me a letter of introduction to the British consul in New York, Mr. Barclay, in which he states that I am already acquainted with this matter, and that Mr. Barclay might receive me and talk with me about this subject, and that I should make preparations in New York for getting men. He told me at the very same time he would send a messenger to the governor-general of Canada. I went to New York and delivered my letter to Mr. Barclay.

Q. What was this messenger sent for?

A. To arrange matters about a depot or place where we could send these men whom we got here in the States. I was waiting in New York for the return of this messenger for several weeks. The messenger returned, and was sent again, and no understanding could be made between Sir Edmund Head and Mr. Crampton, (Head is governor general of Canada;) because, during that time, the governor of

Nova Scotia had received orders from England to commence a new depot at Halifax, and to try and get men in the United States for this service.

Q. The arrangement was not made by the messenger sent to Canada to Sir Edmund Head, because he had received a letter from the governor of Nova Scotia, stating that he had received orders from England to make Halifax the depot?

A. Yes, sir. The reason for sending all the men to Halifax was the order that the governor of Nova Scotia received from England. During that time I went back to Philadelphia. It was on the 10th or 11th of March, 1855, when I came back to Philadelphia. I learned from a friend of mine—a certain Dr. Biell, who is now regimental surgeon in this foreign legion—that Mr. Hertz had received letters—one from England, another one from Mr. Crampton, though I do not know positively; I am not certain where it was from—and that he had spoken to this Dr. Biell, and told him he was able to procure him a commission in this foreign legion.

Q. In consequence of what Dr. Biell told you, state what you did?

A. I went to Hertz and had a conversation with Hertz about this matter.

Q. Where was he?

A. He was in his office, No. 68 South Third street, opposite the Exchange. I saw then Mr. Hertz, and from that time (9 o'clock a. m.) I was with Mr. Hertz until 3 o'clock p. m., where, in pursuance of the advertisements, men came and wrote their names down on a book, and agreed to enter the foreign legion at Halifax.

Q. Have you ever seen a bill like this?

A. I have seen this handbill.

Q. Where?

A. In Mr. Hertz's office.

[The bill was here read in evidence. It reads as follows:]

"MEN WANTED FOR HER MAJESTY'S SERVICE.

(Arms of Great Britain, with mottoes.)

"PROVINCIAL SECRETARY'S OFFICE,
"*Halifax, Nova Scotia, March* 15, 1855.

"The lieutenant governor of Nova Scotia having been employed to embody a foreign legion, and to raise British regiments for service in the provinces or abroad, notice is hereby given, that all able-bodied men between the ages of 19 and 40, on applying at the depot in Halifax, will receive a bounty of £6 sterling, (equal to $30,) and on being enrolled, will receive $8 per month, with the clothing, quarters, and other advantages to which British soldiers are entitled.

"Preference will be given to men who have already seen service.

"The period of enlistment will be from three to five years, at the option of the British government.

"Officers who have served will be eligible for commissions. Gentlemen who wish to come into the province will please lodge their names, rank, date of service, &c., at the office.

"Persons who serve in the foreign legion will, on the expiration of

their term, be entitled to a free passage to America, or to the country of their birth.

"Pensions or gratuities, for distinguished services in the field, will be given.

"Nova Scotian and other shipmasters who may bring into this province poor men willing to serve her Majesty, will be entitled to receive the cost of a passage for each man shipped from Philadelphia, New York, or Boston.

"By command:

"LEWIS M. WILKINS,
"*Provincial Secretary.*"

Q. (Another bill here shown to witness.) Have you ever seen this bill?

A. I have, in Detroit.

[The bill was here read in evidence. It read as follows:]

"NOTICE.

"A foreign legion is now being raised in Halifax, Nova Scotia. Persons wishing to join the legion will receive a BOUNTY of £6 sterling, or $30; from which a deduction of $5, for travelling expenses to Nova Scotia, will be made. Besides good rations and quarters, men will receive $8 a month as pay.

"*The period of enlistment is three or five years*, at the option of the applicant.

"For extraordinary service in the field, or wounds, BOUNTIES and PENSIONS FOR LIFE will be granted. Besides which, there is now a project in view, and which will undoubtedly be carried out, to give to each soldier, at the expiration of his term of service, fifty acres, and to each non-commissioned officer one hundred acres of land in Canada.

"All who are inclined to enter the service under the foregoing very favorable conditions, are hereby invited to apply at Niagara City, Butler Barracks, or at the WINDSOR CASTLE, Windsor, C. W."

Q. (Another bill shown witness.) Did you ever see this bill?

A. Yes, sir; I had that printed in Detroit.

Mr. Van Dyke. It is a German bill.

Mr. Remak. The paper was printed to the order of the witness.

Judge Kane. The paper now presented is part of the general transaction, which does not directly affect the person on trial. It is like the letter of Mr. Crampton which was read a short time ago, and is a portion of the general narrative.

Question by Mr. Van Dyke. Is that a true translation attached to the German handbill?

A. Yes, sir.

[The translation was here read in evidence. It read as follows:]

"NOTICE.

"In Halifax, Nova Scotia, a foreign legion will be formed. Every one who will enter into this legion, which is for the most part composed of Germans, and has German officers, is entitled to a bounty of £6 sterling, or $30; from which, however, $5 for travelling expenses to Nova Scotia will be taken off.

"Moreover, every man will receive full and good maintenance, besides $8 a month pay.

"The time of service is according to pleasure, 3 or 5 years.

"For extraordinary services in the field, or wounds, bounties and pensions for the whole lifetime will be given. It is also truly in prospect, that every soldier, on the running out of his time of service, will obtain 50 acres, and every non-commissioned officer 100 acres of land in Canada, as his own property.

"Every one who is disposed to fall in with these conditions is hereby notified to repair to the Niagara barrack, not far from Queenstown, Canada West, at the depot there established."

Q. You say you went to Mr. Hertz, and you saw the recruits sign the book there; look at that book and say if that is it?

A. That is the book.

Q. Where did you see that book?

A. At Mr. Hertz's office.

Q. Did you see any of the parties signing it?

A. Yes, sir, [looking at the book] there is the handwriting of some men.

Q. Will you read me the names of the men you saw sign?

A. The names of the officers were cut out.

Q. Do you recollect the name of Joseph Purnell?

A. Yes, sir; I recollect the names of all the men in my company.

Q. Go on and state what you did after the men enlisted.

A. After we had more than 100 men, we gave them cards, and told them we would be ready to start on Sunday, the 25th of March, 1855, on the steamer Delaware, in the morning, for New York.

Q. What did you tell, or Hertz tell, these men? If you told them anything, what was the understanding?

A. The understanding was, that those men who signed this book—

Judge Kane. Was the understanding announced in the presence of Mr. Hertz?

Witness. Yes, sir; in the presence of Mr. Hertz the men were told that there was a foreign legion now established at Halifax, and that Mr. Hertz would send them to Halifax, to the foreign legion, to enlist in it; every man that is well, and able-bodied, and willing to enlist in this foreign legion, shall have a free passage, and $30 bounty, and $8 a month pay; and the men who agreed to be attached to this foreign legion signed this very book.

Q. Who said that they should sign that book?

A. Mr. Hertz; and they signed this book with the understanding to go to Halifax and enlist in the foreign legion; and it was also told to those men that an officer should go in their company, and I was called captain of those men before I started, and was introduced to them, before we started, as their captain; I was to take that company. I recollect Palattre and Purnell very well.

Mr. Van Dyke here asked the witness whether he recollected the names of the various persons who composed his company? when he replied, that he remembered the following, besides some sixty more whose names he did not recollect:

F. P. Garrier, Jacob Branning, Fredrick Fuss, Hugh Killen, Fred. Ferdinand Bostandig, Emanual Urnheart, Edward Rollnn, Carl Muhlenhausen, John Schæffold, Petrus Pauls, John Kœlomus, Jacob Blecher, Foley Worrell, Rudolph Charles Ruth, Peter Ropert, Ed. Dobeller, Jacob Roth, Pierce Pelattre, Joseph Purnell, Gustav. Prothe, Gunther Leopold Neisbaum, Wilhelm Heinrich, Karl Altenberg, Karl Barthold, Johann Baumiescher, F. Ulrich.

Q. Were all these persons in your company?

A. Yes, sir.

Q. How many more went with you?

A. Well, I started from here with about 75 or 76 men, and two officers, Lieutenant Essen and Lieutenant Schumann, on the steamer Delaware, to New York.

Q. When did you leave here?

A. On Sunday, the 25th of March, early in the morning, and arrived in New York on Monday morning about five o'clock.

Q. Well, sir, when you got in New York what did you do?

A. I came to New York in the morning at five o'clock, and left my men on board the boat, as I was not furnished with means enough, as I had received only some money from Hertz. I had received tickets and $25 to go on to New York, and I was there to receive more money.

Q. Was that money given you for the purpose of taking this company on?

A. Certainly; and I was to receive further means in New York to take the men on to Halifax.

Q. When you got to New York what did you do?

A. I went to see Mr. Barclay, the British consul at New York; and when I got there, Mr. Barclay sent me to Delmonico's to see Mr. Howe. The Hon. Joseph Howe was, at that time, agent from the British government in this recruiting business in the States. He was living at Delmonico's. I saw Mr. Bucknell, not Howe. He told me I should be furnished with means as early as possible before 10 o'clock; I had to divide the men in different taverns, and keep them together there for three days. At last I was furnished with tickets and means to start with these men for Boston, where an English brig, the America, was waiting there to receive us and take us on board to take us to Halifax. Mr. Hertz, in the presence of Mr. Bucknell and Mr. Turnbull, told me this.

Q. How did Mr. Hertz get to New York, if you left him in Philadelphia when you sailed?

A. I travelled with the boat, and Mr. Hertz took the railroad. Mr. Howe or Bucknell was to be applied to to let me have the necessary means to go on with the company. I received this money in New York, through Mr. Hertz, at the beginning of the day, and, before I started, some from Mr. Bucknell. I left New York on the Stonington road, and came to Boston. I arrived there about five o'clock in the morning with all the men, and found this brig, the America, ready to take us on board and bring us to Halifax. I embarked my men.

Q. Did you get this money from Hertz, or Howe?

A. No, sir; from Mr. Bucknell.

Q. Did you see Howe in New York?

A. I saw Howe in New York at the time, and received a letter from Mr. Howe to Sir Gaspard le Marchant. I told him I had so many men in town, and wanted some money, and that I wanted tickets and a letter to Sir Gaspard le Marchant.

Q. The tickets you got in Philadelphia only carried you to New York, on the steamer Delaware, then?

A. Yes, sir.

Q. And you went to Howe and told him you wanted tickets, and a letter to the governor, and some money?

A. He gave me a letter, and Mr. Hertz and Bucknell gave me the money.

Q. Who was Bucknell?

A. He was a civil engineer.

Q. Was he with Mr. Howe?

A. He was with Mr. Howe, but I do not know whether he was engaged by Howe only for the purposes of this business or not: I made the acquaintance of Bucknell only a few days before; I saw Mr. Hertz in New York at the time; Hertz told me I was to go on as soon as possible. I was anxious to get the men away from New York, and he promised to see Howe and get money; he kept me twenty-four hours trying to get money; he gave me the money, subsequently getting it from Howe; I embarked from pier B, in New York, and went on the Stonington road to Boston; I got there at five o'clock, and went around with all my men to the T-wharf, in Boston, and found there the vessel which I was promised I would find.

Q. Who promised you?

A. Mr. Bucknell. When I came to this vessel it was in the morning, between 6 and 7. I embarked my men at once; I gave them breakfast, and started at half-past 8 o'clock for Halifax, and arrived there on the 30th of March. When I came to Halifax, the vessel went into a private wharf, and I was put on shore to report myself to the provincial secretary and Sir Gaspard le Marchant.

Q. Who was provincial secretary?

A. Mr. Wilkins.

Q. Is he the man who signs this proclamation?

A. Yes, sir.

Q. Lewis M. Wilkins?

A. Yes, sir.

Q. When you got to the wharf, you went on shore to report yourself to Wilkins?

A. I did so. The vessel was ordered to the royal wharf, and during that time I met some regimental surgeons and some officers of the 76th regiment, some of the artillery. Afterwards Sir Gaspard le Marchant, governor of Nova Scotia, himself, came to the T-wharf.

Judge Kane. The "T-wharf?"

Witness. The "Queen's wharf." He ordered me to file the company in, and show them; I did so, and Sir Gaspard le Marchant, with other officers, passed along by the men, and inspected the men; I introduced these two men I had with me as lieutenants; they were received by the officers as officers; and I received an order from le

Marchant to march the men up to the hospital to have them examined, and afterwards to march them out to Melville island to have them attested. I marched them up to the hospital, and they were there examined, and two or three men rejected, and one kept back as sick. All the others I marched out to Melville island. There they had the British barracks and barracks erected for the foreign legion; there the men were attested. After the man is enlisted, he has to be attested and sworn as a soldier.

Judge Kane. What is attesting?

Witness. There is a judge comes to the quarters of the soldiers, and then the officer is there, and the judge swears the soldiers in; that is the act of attesting.

Q. What is the form of the oath?

A. The form of the oath is, that we swear to serve her Majesty the Queen of England for a time—three or five years, or so many years as the soldiers agree upon; in this case, the agreement was for three or five years, faithfully, and so on.

Q. That is the form of the oath?

A. Yes, sir; that is the oath they administered to each of those men.

Judge Kane. Is there any writing precedes it?

A. It is not in writing, it is a printed form; it is signed by the judge, and afterwards by witnesses; I signed nearly all of them.

Q. Is it signed by the recruit?

A. Yes, sir; it is signed by the recruit. After the men had been attested, I commenced the drill, and bye-and-bye the men received clothing and arms; I was at Melville island, at the officers' quarters, with the other two officers and Dr. Biell, until the 10th of May; I was entered on the army list, as were the other officers, and we received our pay and were treated as officers; on the 9th or 11th of May Mr. Crampton himself came up to Halifax, in order to make better arrangements about this recruiting business, as many men had been arrested in the States and kept back; on the 13th of May I received a letter from Lieutenant Preston, of the 76th.

Q. (Letter shown witness.) Do you recollect this paper?

A. That is the letter of Mr. Preston, in Halifax, when he told me that Mr. Crampton wanted to see me.

Q. Who is Mr. Preston?

A. Mr. Preston is lieutenant in the 76th regiment—the officer who has charge of the barracks in Niagara.

The note was read as follows:

"TUESDAY, *May* 13, *Halifax.*

"DEAR STROBEL: I am directed by the general to acquaint you that Mr. Crampton wants to see you at his house, at 10 o'clock to-morrow morning; be punctual. If you like, come up to my house at half-past 9 o'clock, and we will go together.

"Yours truly,

"J. W. PRESTON,
"*76th Regiment.*"

Q. Where was he at the time?

A. At the time he was at the fort in Halifax with his regiment; the letter stated that Mr. Crampton wished to see me at his quarters at 10 o'clock on Sunday; I went to see Crampton, and there I found Sir Gaspard le Marchant; I went there with Preston, and I was ordered by Mr. Crampton to make a plan out for him, in writing, to go to the United States—that is, to those cities of the United States which lie on the boundary line, such as Buffalo, Rochester, Cleveland, Toledo, Detroit, Oswego, and others; I wrote a plan for him; I said that I would want so many officers, and for every officer a non-commissioned officer.

Judge Kane. Does the plan affect the parties on trial?

Mr. Van Dyke. I think so; it was after arrests had taken place in some of the western cities that the British minister determined to change the plan of enlistment in the States, and this witness says that, in pursuance of that determination, he received a letter from Lieutenant Preston to call at the quarters of Mr. Crampton; he called there, and Mr. Crampton told him that there had been some difficulty about the recruits, and wished him (Strobel) to prepare another plan, which, if adopted, would avoid that difficulty; he prepared this plan and submitted it to Mr. Crampton, and, if I understand it, the witness will say that the plan was adopted by him with some little variation, and the recruiting was carried on in the United States in accordance with this remodelled plan.

Judge Kane. By either of these defendants in accordance with this plan?

Mr. Van Dyke. If I may be permitted to anticipate the defence, which must be done more or less in every case, it will be, I suppose, the same as made before the commissioner in relation to Budd's company, that the men enlisted in Philadelphia, in that company, as the defendants allege, were nothing more or less than a set of men engaged to work on the railroad in Nova Scotia; we intend to show by this, that Hertz, in so representing, was but carrying out the remodelled plan adopted more effectually by Mr. Crampton at Halifax. I shall show also, by other witnesses, that at a period subsequent to that of which the witness now speaks, and after the defendants were arrested, the defendant Hertz engaged one Baron Van Schwatzenhorn and one Baron Schuminsky to carry on the enlisting business in Philadelphia, and that another company was enlisted by such agents of Hertz in a manner proposed by the remodelled plan.

Mr. Remak, in reply, stated that the witness had sworn that Hertz requested him to do certain things, and whatever resulted from that alleged fact was admissible. Mr. Strobel had given evidence in regard to drawing a plan, but he had not sworn that Hertz commissioned him to devise or draw that plan. He might have been requested by Mr. Crampton to draw the plan, but the counsel for the defence could not see how that could affect, for the present, his client. He could not be responsible for the acts of Strobel, after Strobel had done what he requested of him; and if he went beyond what was requested, he did it on his own responsibility.

Judge Kane. The evidence taken in connexion with the offer of

the district attorney is admissible entirely as it stands, in the same category with evidence originally given by him of concert of the officer with the British government. If it is not brought home to either of the parties on trial by subsequent evidence, of course it will not affect them.

Mr. Van Dyke. I do not wish my offer to be misapprehended by the counsel for the defence in any particular. I state distinctly to the court that I have evidence to show that there was a regular game played by her Majesty's envoy to evade the law; that these men were seemingly engaged to work on a railroad, but in reality enlisted to serve in the foreign legion, and that they were told by Hertz, if any person questioned them, to reply that they had been engaged to work on a railroad in Nova Scotia. I have, for the prosecution, to establish certain important facts: one is, that the sending of these men to Nova Scotia was for the purpose of their being enlisted in the foreign legion, and their sending them there as workmen on a railroad was a specious disguise, under which they hoped to evade the law of this country. If I show that this was their intention, it is certainly evidence, and the crime is proved, notwithstanding their attempt at evasion.

Judge Kane. The evidence is admissible.

Q. Did you prepare that plan?

A. I prepared it.

Q. (Showing a paper.) Is that it?

A. Yes, sir; it is my own handwriting; it is the plan.

Q. Was this submitted to Mr. Crampton?

A. Not this one. This was the copy I first made. I afterwards made a clear copy of it, which was submitted.

Q. This, then, is the original copy, of which a clear copy was made and submitted to Mr. Crampton?

A. Yes, sir.

The paper was here read in evidence as follows:

"I have the honor to inform his excellency the envoy extraordinary of Great Britain in the United States, and his excellency Sir Gaspard le Marchant, the governor of Nova Scotia, of the plan I have adopted to raise the greatest possible number of men in several different cities of the United States on the boundaries of Canada.

"I wish to station in Buffalo Lieutenant Schumann with Corporal Roth.

"In Detroit, Doctor Reuss with Corporal Kamper.

"In Cleveland, Doctor Aschenfeldt with Sergeant Krieger.

"Opposite to Detroit, Sergeant Barchet shall receive the individuals sent by Doctor Reuss, and his duty will be to send them, as fast as they arrive, by railroad to Queenstown, where a depôt must be established, and a magistrate appointed to enlist and attest the men; and it will be the business of the commanding officer of this depôt, when a sufficient number is together, to send them by steamboat wherever his excellency may decide. Those officers stationed at the above-mentioned cities will strictly follow the instructions given to them, through me, from his excellency, in regard to the manner and way to be used in encouraging and sending such individuals who are will-

ing or desirous of leaving the United States to enlist in the British service. My intention in giving to each commissioned officer a non-commissioned officer as assistant, is to enable those gentlemen to find out said individuals, and to avoid the necessity of employing, for this purpose, strangers, who might easily deceive them.

"My opinion is, that every officer, with the assistance of his non-commissioned officer, will be able to transact all the business without being compelled to hire regular agents or runners—that is, if the gentlemen know the proper way of managing.

"I will myself visit each of the places mentioned, and will particularly confine myself to where my presence will be most required. I shall also probably visit Chicago, where, doubtless, a great number of men may be got. We can then agree on reasonable terms for having them conveyed by railroad to Detroit, which expense, in my opinion, would not exceed $2 50 per head.

"I saw all the officers and non-commissioned officers yesterday evening, and held a long conversation with them; the result of which is, that we all perfectly understand each other, that they are all entirely satisfied, and that every one is willing to do his very best in regard to this matter.

"I have also made estimates of all the expenses of the officers connected with this matter for the period of one month at their different points of destination, including their travelling expenses, which I take the liberty of laying before your excellencies.

"Say the travelling expenses of the officers from this place to their different stations, £10 sterling each.....	$400 00
"To Schumann, Aschenfeldt, and Reuss, each $240 per month.....	720 00
"[From this money each has to pay his non-commissioned officer, and to meet all other expenses that may be necessary in sending the men over on the Canadian side; pay of temporary agents, runners, and tavern-keepers, included.]	
"Pay for Weiss, Barchet, and other non-commissioned officers, $100 each.....	300 00
"My travelling expenses from town to town, hotel expenses, pay of my non-commissioned officer, and his travelling expenses.....	300 00
	1,720 00

"Thus making a total amount of $1,720, equal to £341 sterling.

"This, or at most £360, would, in my opinion, be the amount requisite to enable ten officers to carry on operations for one month, and, with reasonable good fortune, to deliver on the Canadian shore a large number of serviceable able-bodied men.

"I have the honor to remain, your excellencies' most obedient, humble servant."

Q. Was that plan adopted?

A. That is the plan which was approved and adopted by Mr. Crampton and Sir Gaspard le Marchant, and I received orders to bring next

morning, at 11 o'clock, the officers mentioned there, four non-commissioned officers of my company, all attested men, and the soldiers to the provincial building, and meet there Sir Gaspard le Marchant and Mr. Crampton. I went there with those men; I met there Mr. Crampton, Sir Gaspard le Marchant and Lieutenant Preston; I was ordered to leave Halifax immediately and repair to the States, and I left Halifax in company with Mr. Crampton and Preston of the 76th, with officers and non-commissioned officers; when I saw Mr. Crampton there I was in uniform, and my non-commissioned officers were in uniform; when we left they received civil clothes from the government there for this purpose, and went on with me; when we came to Portland, Mr. Crampton gave me orders to go with him to Quebec to see Mr. Head, the governor-general of Canada, to have a perfect understanding about the depot and the means of sending men through Canada to Nova Scotia; I went with him; I saw Sir Edmund Head in the presence of Mr. Crampton; I received letters from Sir Edmund Head to get barracks at Niagara; these barracks were to receive the men who were sent out of the States to enlist in the foreign legion; I received also at Sir Edmund's house—

Judge Kane. I am anxious not to go beyond the limit of courtesy to a foreign government. I do not wish to penetrate what was done there, unless it appears connected with the persons now on trial. The district attorney must guide the witness after this suggestion, so as to avoid the appearance of too close an inquiry into matters not clearly before this court as matters of judicial investigation.

Mr. Van Dyke. I understand the suggestion of the court, and will try to keep the witness within the proper bounds. My whole object is to get the general plan of operations, and then to show that the object of the general plan was to procure men from the States to join this foreign legion, and that the defendant co-operated in that general plan.

Q. (Paper shown.) Will you look at that paper, and state what it is?

A. It is the instructions I received at Quebec, in Sir Edmund Head's house, out of Mr. Crampton's own hands. The original was written in Mr. Crampton's own handwriting, and was written, at least part of it, in my presence in his room. This is a copy made from the original; I made it for the purpose of preserving a copy. The original I gave back, in a report I made to Sir Gaspard le Marchant, in Halifax. That report stated what I had done to clear me of two charges made against me up there.

Q. That, then, is a copy made from the original instructions of Crampton, as to your duty in the United States?

A. That is a copy of the original instructions I received at this time from Mr. Crampton.

The paper was being read as part of the evidence, when, on motion, a recess was taken for ten minutes. On the court re-assembling, the reading of the paper was concluded. It is as follows:

"Memoranda for the guidance of those who are to make known to persons in the United States the terms and conditions upon which recruits will be received into the British army:

"1. The parties who may go to Buffalo, Detroit, or Cleveland, for this purpose, must clearly understand that they must carefully refrain from anything which would constitute a violation of the law of the United States.

"2. They must, therefore, avoid any act which might bear the appearance of recruiting within the jurisdiction of the United States for a foreign service, or of hiring or retaining anybody to leave that jurisdiction with the intent to enlist in the service of a foreign power.

[Both these acts are illegal by the act of Congress of 1818, sec. 2.]

"4. There must be no collection, embodiment of men, or organization whatever, attempted within that jurisdiction.

"5. No promises or contracts, written or verbal, on the subject of enlistment, must be entered into with any person within that jurisdiction.

"6. The information to be given will be, simply, that to those desiring to enlist in the British army, facilities will be afforded for so doing, on their crossing the line into British territory; and the terms offered by the British government may be stated as a matter of information only, and not as implying any promise or engagement on the part of those supplying such information, so long at least as they remain within American jurisdiction.

"7. It is essential to success, that no assemblages of persons should take place at beer-houses, or other similar places of entertainment, for the purpose of devising measures for enlisting; and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would, undoubtedly, be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself.

"8. Should the strict observance of these points be neglected, and the parties thereby involve themselves in difficulty, they are hereby distinctly apprized that they must expect no sort of aid or assistance from the British government; this government would be compelled, by the clearest dictates of international duty, to disavow their proceedings, and would, moreover, be absolved from all engagements contingent upon the success of the parties in obtaining, by legal means, soldiers for her Britannic Majesty's army."

Examination continued by Mr. Van Dyke.

Q. The paper just read you copied from the original one in the handwriting of Mr. Crampton?

A. Yes, sir.

Q. (Another paper shown witness.) In whose handwriting is this paper?

A. At that very time I also received this cipher to telegraph with to Mr. Crampton, and to Halifax, about this recruiting business; I can-

not swear as to whose handwriting it is in, but I believe it is Mr. Crampton's; I did not see him write it, but he handed it to me.

The paper was here given in evidence. The following is a copy:

Letter.	Cipher.	Letter.	Cipher.
"a	y	n	q
b	v	o	n
c	j	p	e
d	l	q	h
e	x	r	o
f	e	s	p
g	z	t	k
h	u	u	g
i	b	v	d
j	w	w	m
k	t	x	r
l	a	y	i
m	s	z	f"

Q. You were to telegraph him by this cipher, instead of the usual way?

A. Yes, sir.

Q. What was the object in giving you this cipher?

A. Such ciphers were given to several officers—Mr. Smolenski, Mr. Cartensen, and men actually engaged in the recruiting business, received those ciphers.

Q. Was it for the purpose of avoiding detection?

A. It was for the purpose of avoiding detection, and avoiding any difficulties with the authorities here. It was to enable me to telegraph to Mr. Crampton, from every place I might visit, without the people in the telegraph offices understanding it.

Q. Were all the officers sent on this recruiting to telegraph to Mr. Crampton as to their proceedings, and was that cipher to be used?

A. Yes, sir.

Q. (Card shown witness.) What is that?

A. That is a card of invitation to Sir Gaspard's table, in Halifax, received on the 8th of April.

The card was read as follows:

"His excellency, Sir Gaspard, and Lady le Marchant, request the honor of Captain M. F. O. Von Strobel's company at dinner, on Sunday, 8th April, at ¼ to 7 o'clock.

"BELVIDERE. An answer is requested."

Q. Are these also cards of invitation to you?

A. Yes, sir.

The cards are here read as follows:

"COLONEL CLARKE,
And the officers of the seventy-sixth regiment,
Request the honor of
CAPT. STROBEL AND THE OFFICERS OF THE FOREIGN LEGION,
Company at dinner,
On Wednesday, 18th April. *An answer will oblige.*"

"COLONEL FRASER, COLONEL STROTHERD,
And the officers of the royal artillery and royal engineers,
Request the honor of
CAPTAIN MAX F. O. STROBEL'S
Company at dinner,
On Tuesday, the 3d April, at seven o'clock.
Artillery park. *An answer is requested.*"

Judge Kane. What are these papers for?

Mr. Van Dyke. To corroborate what the witness says.

Judge Kane. When the witness is impeached, it will be time enough to corroborate what he says.

Mr. Van Dyke. I withdraw this paper.

Q. (Letter shown witness.) Did you receive that letter from Mr. McDonald?

A. Yes, sir. He is an officer in the provincial secretary's office.

The letter was here read in evidence as follows:

"PROVINCIAL SECRETARY'S OFFICE,
"*May* 3, 1855.

"DEAR SIR: I am directed by his excellency the lieutenant-governor to introduce to you the bearer, Lieutenant Kuentzel. He comes with letters to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to secure his commission.

"Your obedient servant,
"BRUCE McDONALD.

"Capt. STROBEL, 1*st Company Foreign Legion.*"

Q. (Letter shown witness.) Do you recollect this letter?

A. This is a letter written by Preston to me, while I was actively engaged in recruiting men in Buffalo, Cleveland, Detroit, and other places. Mr. Preston had, at that time, charge of the barracks in Niagara.

The letter was read in evidence. It is as follows:

"DEAR SMITH: I send you the accompanying order, in currency, equal to £80 sterling, which please send me a receipt for by return of post. I find I cannot make any arrangement with the railroad peo-

ple here. They say the tickets had better be paid for at Windsor; which I think is best also, for then the men will come to me clear of expense, which is the intention. Tell Schumann and Dr. Aschenfeldt to telegraph me how they are getting on at once, and how *many*, or if they have got any men. Let me hear also from you.

"Yours, truly,

"J. W. PRESTON, *79th Regiment.*

"NIAGARA, 4th June, 1855."

Witness. This Mr. Preston afterwards took command of the depot that was established in Niagara town.

Q. This letter says "Dear Smith:" what was the meaning of that?

A. I was obliged to take that name, because I was known as being previously connected with enlisting in the States.

Q. (Paper shown witness.) What is this?

A. That is a telegraph I received from Preston.

The paper was read in evidence, as follows:

"WINDSOR, *June* 4, 1855.

[By Telegraph from Niagara.]

"How many men have you got? Money leaves here to-morrow morning by mail, on U. C. Bank—answer immediately.

"J. W. PRESTON.

"To Mr. SMITH."

Witness. Mr. Preston was the medium between myself and le Marchant. At Halifax, Preston received the orders from le Marchant and telegraphed them to me.

Q. (Paper shown witness.) This is another telegraph from Preston, is it not?

A. Yes, sir.

The telegraphic despatch was read in evidence, as follows:

[By Telegraph from Niagara.]

"WINDSOR CASTLE, *7th June,* 1855.

"To Mr. SMITH: Send in statement of money issued and how applied. Tell all the others to send me similar statements; until such arrive I cannot issue for next month.

"J. W. PRESTON.

(Paid.")

Q. Go on and state what occurred after you left Quebec?

A. I left Crampton in Quebec, and travelled with Preston and another English gentleman, Captain Bowls, to Montreal; I there received orders for another English officer in Toronto, to give over to us the barracks in Niagara town; Preston took charge of the barracks; I met my officers whom I had sent from Portland to Niagara; they were sent from Portland to Niagara Falls; I met them at Niagara Falls, and directed them to go to different places—to Cleveland, Detroit, and Buffalo; and afterwards I sent one non-commissioned officer to Chicago; I was called back; I commenced it about the 4th of June, and I was recalled on the 13th, and arrived back in Halifax; I was recalled by

the officers, because during this time I was only able to enlist sixty or seventy men, and Sir Gaspard expected a great many more; and through this, on account of the intrigues of Mr. Preston, and some other officers who were anxious to receive commands in this foreign legion, I was recalled to Halifax; I was charged with having kept two officers on the Canada shore instead of sending them all into the States; and I myself, instead of travelling and going to Chicago, Cleveland, and all around all the time to every place, was charged with stopping too long in one place—in Windsor.

Q. Who made these charges?

A. They were made by Mr. Preston, and sent to Halifax.

Q. Who sent to you and told you of them?

A. Sir Gaspard le Marchant. He said that these charges had been made, and that was the reason I was sent for to Halifax. I requested a court-martial, and wrote a long account to le Marchant. I also sent it to Crampton, by a friend of mine, Mr. Ochlschlager; my company was still at Melville island, under the command of one of the officers I left there.

Q. You saw them there at that time?

A. I was forbidden to see the men, and the men had strict notice not to converse with me—at least the men received such notice the second day I was there. I told the governor-general, that under such circumstances I would leave, and the sergeant was put in irons, and fifty men of my company sent to prison, for conferring with me by sending to me their non-commissioned officer. I left Halifax with the America, and came back to the States, and since that time I have had nothing to do with this concern. I saw Hertz here afterwards. Mr. Crampton took the address of every one of the agents who had been engaged in recruiting at that time in Boston, New York, Philadelphia, and Baltimore, and told me that he was going to see them.

Q. Who did he take as the name of the person in Philadelphia?

A. Mr. Hertz was the man recruiting in Philadelphia.

Question by Mr. Remak. Who said so?

A. Mr. Crampton took the names of different persons recruiting in different cities.

Q. Whose name did he take as the person in Philadelphia?

A. He knew the names already, but took the address of every one of those gentlemen.

Q. From you?

A. From me, those I had in my possession—the address of Captain Carstenson, of Boston, and other parties in New York; of Smolenski, and the address of a friend of mine in Baltimore.

Q. Did Crampton take the address of Hertz from you?

A. He said he knew all about the proceedings against Hertz, and when he came to Philadelphia he would settle with every one of those gentlemen, and arrange matters in a different way, because he thought proper not to send men by the vessels any more, but by railroad into Canada.

Q. Do you know about his giving any order about engaging emigrant runners?

A. Yes, sir; he allowed me to pay every runner $4 for a man.

Q. Do you know what Hertz was to get for every man he sent?

A. I do not know exactly the amount Mr. Hertz received; I know he received money, and I know that they said in Halifax that Mr. Hertz——

Mr. Remak. I object to that.

Question by Mr. Van Dyke. Did you ever hear Hertz, or any other person or persons in his presence, say that he received any money, and how much?

A. Yes, sir, I heard Mr. Hertz say he had received money, but never enough to cover his own expenses.

Q. Did he tell you from whom he received it?

A. He told me he would receive money from Mr. Howe.

Q. What else did he say to you in reference to this matter?

A. Mr. Hertz told me he had connexion with the English government, and that Mr. Crampton and Mr. Howe were the proper agents for paying out the money, and giving tickets and giving recommendations for officers to get commissions. Mr. Hertz said so, and said he had instructions from the British government to that effect, and that he would receive head-money for the men. He mentioned Howe and Crampton as persons from whom he received it.

Q. Did he mention any other?

A. Not that I know of.

Q. Was Mr. Bucknell known to Mr. Hertz?

A. He did not mention him as a person engaged in it, or who had engaged him in it.

Q. Did he mention any other besides Mr. Crampton and Mr. Howe?

A. Not that I know of.

Q. Not that you recollect?

A. I do not recollect any other person.

Q. (Paper shown.) Is that the report you made to Mr. Crampton of the transaction?

A. That is the report I made to Mr. Crampton.

Q. Was it delivered to him?

A. I sent it to Washington, but the bearer did not find Mr. Crampton there; he had at that time gone up to Niagara. I sent a friend to Washington with this report to Mr. Crampton, to let him know everything that had occurred.

Q. When he did not find Mr. Crampton in Washington, where did he take it to?

A. He took it to New York, and left it with Mr. Stanley, the vice consul there.

[The report was here given in evidence. It contains a full history of the transaction, from the time the witness (Strobel) left Halifax until his return.]

It is as follows:

WINDSOR, C. W., *June* 18, 1855.

SIR: After having laid before you my plan for raising troops for the British army in the United States and on the Canada frontier, I received from you, at the provincial building, Halifax, Nova Scotia, in the presence of his excellency Mr. Crampton, minister from Great

Britain to the United States, Mr. Preston, lieutenant 76th regiment, and officers of the foreign legion, the following instructions:

"You will repair immediately to the United States, accompanied and assisted by Drs. Aschenfeldt and Reuss, Lieut. Shuman, Mr. Mirback and four non-commissioned officers, to raise men for the British army within the jurisdiction of that government. You will, in accordance with your plan submitted to me, station said officers and non-commissioned officers at the posts agreed upon, unless it may in your judgment appear expedient to alter the details of said plan. You are also authorized to order back to Halifax any of your assistants who may, in your opinion, be incompetent for the service, or who may neglect the duty assigned to them. You will receive travelling expenses for yourself, officers, and non-commissioned officers, also, before leaving Halifax, the half-monthly pay as per estimates, in advance, for officers and men. At the expiration of the half month, you are authorized to draw from Mr. Preston the half-monthly pay again in advance, and so on. You are further authorized to draw on Mr. Preston for such sums as you may require for the transportation of men, head-money, &c. You will receive all orders from me through Mr. Preston, whom you will consider as my acting aide-de-camp in this matter, and you will be the medium to transmit those orders to your officers, so that there can be neither interference with, nor interruption of, the plans laid down by you. Mr. Preston will be commanding officer of the recruiting depot at Niagara town. You will exercise no interference with the transmission of men from Niagara to Halifax, but will confine yourself strictly to the duty of obtaining men in the United States, and of forwarding the same to Mr. Preston at Niagara. You are authorized to employ such assistants as you in your judgment may deem necessary, and are further empowered to state in my name, to any gentlemen bringing a certain number of men, (say 120,) that they will receive from the British government commissions as captains in the foreign legion, and others different commissions, in proportion to the number of men they may bring."

In accordance with the above instructions, I started from Halifax on the 15th of May, accompanied by my officers, as above mentioned. At Windsor, N. S., I fell in with his excellency Mr. Crampton, Lieut. Preston, and Capt. Bowls, who had left Halifax the same day. We travelled together to Portland, Me., where we arrived on the 18th ult. Mr. Crampton requested me to go with him to Quebec, L. C., as he was desirous that we should have a perfect understanding with, and the full co-operation of, his excellency Sir Edmund Head, governor of Canada. In compliance with this request, I ordered my officers and non-commissioned officers to repair to Niagara Falls, there to await my arrival. We arrived at Quebec on the 20th ult., and on the following day were received by his excellency Sir Edmund Head, and held a conference with him, in which he offered his best assistance in forwarding our object, and at once gave up the barracks at Niagara town as a recruiting depot, and accordingly sent for Major Elliot; which proceedings detained us until the 23d ult. On the evening of that day, Lieut. Preston, Capt. Bowls, and myself started in company with Major Elliot for Montreal, where we arrived on the morning of

the 24th of May. Arrangements were then entered into with Col. Bell, in regard to the barracks at Niagara and La Prairie. On the following day I started alone for Niagara Falls, C. W., where I arrived on the morning of the 27th. Lieut. Preston and Capt. Bowls started for Toronto on the 25th, and hence did not arrive at Niagara Falls till the 28th. These gentlemen remained at Niagara Falls till the 30th, when they took possession of Butler barracks, and the first arrangements were made for forwarding recruits to that station. As your excellency will here observe, I was up to this moment, viz: the 30th or 31st of May, unable to move one step in the object of our expedition, it having required all the time to arrange the preliminaries. On the same day that Mr. Preston left Niagara town, I learned from Dr. Aschenfeldt and Mr. Shuman that the conduct of two of my non-commissioned officers, Sergeants Roth and Krieger, had been unworthy of the confidence reposed in them, and I therefore deemed it advisable to send the said men to Lieutenant Preston at Niagara town. I also thought it necessary to send to Niagara one of my officers, for a double purpose—1st. To act for Mr. Preston as interpreter on the arrival of recruits; and 2d, as we were unable actually to enlist the men in Canada, I deemed it well that some German of experience and age should be with the recruits sent on, to keep them in proper spirits, and to prevent any loss by desertion from the barracks or *in transitu* to Halifax. I accordingly deputed Mr. Mirlack for this service, and, with the license permitted me in your instructions of the 14th of May, was therefore obliged to modify my plan to suit this emergency. On the 30th instant, I went with Lieutenant Shuman to Buffalo. Having visited some of the localities in that place and Fort Erie, on the opposite shore of the Niagara river, I gave Lieutenant Shuman the following orders, in accordance with the instructions I had received from Mr. Crampton, and which I respectfully beg leave to subjoin. 1st. I ordered Mr. Shuman to take up his quarters on the Canada shore at the village of Fort Erie. 2d. To have his non-commissioned officer, Corporal Kamper, stationed in Buffalo. 3d. To go daily to Buffalo, and, in connexion with Corporal Kamper, there to make such inquiries as might lead to the obtaining of men. 4th. To send the men as quickly as he should obtain them to Lieutenant Preston, at Niagara, and at the same time to report to me regularly the number of men obtained, and all circumstances relating to them. 5th. To take particular pains to lay out no moneys on the American side, but whatever related to the expenditures to induce runners to bring men to him should be positively and rigidly transacted on the Canada shore; and further, if it were necessary to keep men together for a longer term than one day, to be careful to do so without the precincts of the United States. This latter order is strictly in accordance with articles 2d and 4th of Mr. Crampton's instructions. On the same evening, May 30th, I ordered Dr. Reuss to leave for Detroit, and informed him that he would co-operate with Dr. Aschenfeldt, who would be stationed at Windsor, on the Canada shore of the Detroit river. I also communicated to him, in effect, the same orders I had already given to Mr. Shuman. I went to Niagara town to draw the half-monthly advance pay for officers on the 31st of May. As Mr. Pres-

ton was unable to pay me the amount which I required, he gave me but £40 sterling. On the 1st June I left Niagara town, accompanied by Dr. Aschenfeldt, for Cleveland, Ohio, where I had already stationed Sergeant Barchet. Passing through Buffalo, I saw Lieutenant Shuman and supplied him with some money for a few days, until I should obtain the balance of the half-monthly pay from Mr. Preston. On the 2d instant I saw Barchet in Cleveland, and supplied him with as much money as I could spare. On the 3d I arrived with Dr. Aschenfeldt at Detroit; I saw Dr. Reuss, and supplied him with money. I then supplied Dr. Aschenfeldt with money and left him at Windsor. On the 4th of June I again started for Niagara town, in order to receive from Mr. Preston the balance of the second half-monthly pay, which I must here remark was a most useless journey, both as regards the expense and the loss of time. Had the money been properly forthcoming in the first instance, this journey would have been avoided; but I determined, as I was now obliged to go there, to make use of the journey as a means of again visiting the different posts, and paying to the officers the balance of their half-monthly dues. In this I was again frustrated by a failure of the telegraph office in sending me a despatch of Mr. Preston, as a check had already been sent by mail for the amount. In spite of this, however, I telegraphed from Niagara to Mr. Shuman to meet me at Chippewa and report to me the result of his proceedings in Buffalo. His report was, much to my regret, and contrary to all my expectations, very disheartening—he having sent but four or five men to Niagara. Having learned by letter from Albany, New York, that there was a fair prospect at that place of obtaining from fifty to one hundred men, I ordered Mr. Shuman to direct Corporal Kamper to undertake the whole business in Buffalo, and to repair at once to Albany, then to place himself in connexion and communication with the emigrant offices and intelligence depots there, and to use his most strenuous efforts to obtain men, also to communicate with me at once on the subject. As I have already stated, the check for the balance of the pay had been sent to Windsor while I was *in transitu* between that place and Niagara. I was therefore without money, and gave Lieutenant Shuman a draft on Mr. Preston for £20 sterling, knowing that it would require at least three days for me to forward the money from Windsor to him. On presentation, Mr. Preston refused to honor the draft. Considering that these matters would be in proper train in Buffalo, and supposing that Shuman would leave at once for Albany, I returned to Windsor, in order to receive a report from Sergeant Barchet, stationed at Cleveland, and to inform myself how matters were progressing in Detroit. I returned to Windsor, C. W., on the evening of the 7th instant. On the following morning, to my utter astonishment, Mr. Shuman, who was kept by Mr. Preston at the depot, and, in consequence of it, was not able to see his men off at Buffalo again, nor to supply him with money and to give him orders in regard to my sending Mr. Shuman to Albany, had left Niagara by order of Mr. Preston. The night train came into Windsor in sixteen hours after my arrival, bringing me the subjoined order from Mr. Preston, marked X. As the order purports to have emanated from your excellency, I promptly obeyed the same, and sent Mr. Shuman to

Cleveland for Barchet's account, at the same time giving him those of Drs. Aschenfeldt and Reuss and my own, giving him no further orders, but simply telling him to return to Mr. Preston as soon as possible. I had received from Barchet the information that matters in Cleveland were as disheartening as in Buffalo; also saying that a Mr. Seybert, who keeps an intelligence office there, was willing to undertake the business if we could station some one at Port Stanley, for the purpose of receiving men whom he would send there. I wrote to Mr. Preston requesting him to send a non-commissioned officer or some other person to Port Stanley, to receive the men whom Mr. Seybert might send. This request was unattended to, and Mr. Preston did not even condescend to notice it.

From all I could learn, Chicago and Milwaukie offered large inducements as a field for our operations, and as I thought the port of Cleveland would have been provided for by Mr. Preston, in accordance with my request, I sent Barchet on the 11th instant, in company with another man, to Chicago, also Dr. Reuss to Toledo, which place I had myself visited, and deemed a good port for obtaining men. I directed Barchet to communicate with me by telegraph, or otherwise, as soon as my presence and the money for tickets should be requisite in Chicago for bringing men to Niagara.

On this day, the 11th instant, Mr. Theo. A. Oehlschlager arrived at Windsor from Niagara Falls. Mr. Oehlschlager is a gentleman already known to Mr. Crampton, and of whom Mr. Crampton and myself had several conversations. I spoke very favorably of him, and Mr. Crampton advised me to obtain so valuable an assistant. Mr. Oehlschlager is a British subject by birth, being a native of Quebec, L. C., speaking German like a native, and French with fluency; the value of his assistance cannot be over-estimated. Having, as I have already stated, lost two non-commissioned officers, and having stationed one officer permanently with Mr. Preston, I felt the necessity of more assistance, and knowing no one more competent, I accordingly wrote for him from Cleveland on the 2d June. I remained at Windsor on the 12th and 13th instant, in the expectation of receiving a letter from Barchet, and also anticipating the return of Dr. Reuss from Toledo with men. On the morning of the 13th I received a letter from Barchet, stating that Chicago was a capital place, and that a great many men might there be obtained, but it would be necessary to forward them immediately, as it would be impossible to keep them long together. I accordingly wrote at once a letter to Mr. Preston, requesting him to send me £100 sterling. Before this letter was mailed, I received the following despatch from Mr. Preston: "Send Aschenfeldt back immediately." I accordingly did so, sending the letter I had written by Dr. Aschenfeldt. On the following day Dr. Reuss returned from Toledo, bringing with him four men, stating at the same time that a number of from eighty to one hundred men may be obtained alone in Toledo. He also brought very good news from Sandusky and Monroe. I then received a despatch from Dr. Aschenfeldt, saying, "We all go back; more by letter." Having collected some eleven men at Windsor, besides seven already forwarded from this place to Niagara, and deeming the expedition, from some un-

known cause, entirely broken up, I telegraphed to Mr. Preston, asking what I should do with the men. His answer was: "Forward men. Recall Barchet, and return to-morrow." Not comprehending the whole business, I deemed it best to repair at once to Niagara and have the mystery cleared up. I accordingly started the next morning, leaving Mr. Oehlschlager in my place at Windsor. I arrived at Niagara on the morning of the 16th. I was cordially received by Mr. Preston, who informed me that, having held several conversations with Major Browne, Mr. Wieland, and other gentlemen, he had come to the conclusion that we (myself and the officers under my charge) had neglected our duty, and that he had two charges in particular to make against me—1st. That I had ordered two of my officers to remain on the Canada shore. 2. That I, myself, had remained too long inactive at Windsor, C. W. In consequence, he had deemed it his duty to send a despatch to your excellency, acquainting you with said disposition on our parts. That you had replied, directing him to act on his own responsibility. That thus empowered, he had deemed it proper to recall all those employed, and to send them back to Halifax. I informed Mr. Preston that I would at once comply with the order of your excellency; at the same time I assured him of my opinion as to the unadvised and rash proceedings he had deemed it proper to adopt, and further expressed my belief in his having been influenced in these measures by Major Browne, Mr. Wieland particularly, and others, who were anxious, to my perfect knowledge, to obtain commands in the foreign legion. While in Niagara town, I saw a despatch from this Mr. Browne to Lieutenant Preston, stating in effect that my letter to Mr. Preston, of the 13th instant, was a falsehood, and that there were no men in Chicago to be sent. The following is, I think, the wording of the despatch: "The fifty men a myth." Having some little personal business in Windsor, and wishing to communicate with Mr. Oehlschlager, I returned here this morning. On my arrival, Mr. Oehlschlager informed me that, shortly after my departure on the 15th instant, a Mr. Browne arrived here from Mr. Preston. He represented himself, or at least led Mr. Oehlschlager to believe, that he was a major in the British service. Mr. Oehlschlager, under such a supposition, believing him to be an officer in the British army, and an authorized agent of your excellency, immediately gave up the charge of the post and of the men. Mr. Browne sent the men on to Niagara that evening, in charge of Dr. Reuss, who left yesterday for Halifax. I also found here a despatch from Chicago from a man named Konen, employed by me at that place, which fully substantiates the good news contained in Barchet's letter. It reads as follows: "Come here immediately. Twenty ready; tickets wanted."

I have thus far, your excellency, attempted to give a rough outline of what I have done since my departure from Halifax, and shall now leave it with yourself to judge whether the time has been wantonly thrown away, and whether I have neglected my duty or not. There have, it is true, been many causes which have rendered the expedition less successful than I had imagined in the offset, but over these circumstances I have, as you may judge from the above statement, been

able to exercise but little or no control. Besides, your excellency will be pleased to take into consideration that we have not had more than eight or nine working days of real trial. We did not get fully into operation before the 4th or 5th. On the 7th Mr. Shuman was withdrawn by order of Mr. Preston. Not before the 9th, the bills we had printed were in our hands and posted. The 10th was Sunday. On the 13th the expedition was virtually broken up, Dr. Aschenfeldt recalled, and your excellency in possession of a despatch to that effect.

The difficulties under which we had to labor were, in the beginning, very great. In the first place, shortly before our arrival, the navigation of the great lakes was opened, and thousands of men who had lain idle for months were at once thrown into employment. A week before Mr. Shuman arrived at Buffalo, six hundred working men had been withdrawn from that place, to work on the telegraph line through Newfoundland. In short, work was plenty, and the weather mild; it is, therefore, but little wonder that under such inauspicious circumstances we did not succeed at once. Then the Americans have in every city in which we have been a recruiting officer, where they offer $12 per month and a bounty of one hundred and sixty acres of land, besides giving head-money to the runners. Again, a great antipathy appears to prevail throughout the United States to British service, and a strong mistrust of the whole business, from the occurrence relating thereto which took place in the eastern cities. These difficulties had to be overcome; and just when we arrived at a point where the prospects began to brighten, and we had tangible hopes of our ultimate success, the whole matter, as far as ourselves are concerned, is given up, without my being in the slightest instance consulted or advised with. From certain remarks of this Mr. Browne, I am led to believe that the conduct of the money matters of the expedition has also been called in question. In refutation of any such malignant charge, I respectfully beg leave to subjoin my accounts, and request that those of my officers may be strictly examined.

A few words in relation to the charges made against me by Mr. Preston. The first is simply enough refuted by all that part of the above statement which refers to my orders and instructions to Dr. Aschenfeldt and Mr. Shuman. Of the second, I have but to observe, that when I started from Halifax I was under the impression that I was given charge of this expedition in the United States; that I had discretionary power to take up my headquarters where I deemed best, and where I could most readily hear from my assistants, and not that my conduct was to be subject to the espionage and impertinent interference of men of whom I had no knowledge whatever, in connexion with this expedition. I refer to Mr. Browne and others. Nor can I conceive how Mr. Preston could commit such a gross error as he has done, in breaking up this expedition, without stronger and more sufficient reasons.

I have now to make a few remarks on Mr. Preston's conduct in connexion with this business, which, however painful it may be, I consider it my duty to your excellency, under whose orders I have been engaged in this matter, and to myself. Mr. Preston, in the first

place, as early as the 7th inst., violated the spirit and letter of your instructions to me in two instances: 1st. By failing to pay my draft sent by Mr. Shuman; and 2dly. By sending Mr. Shuman down to Windsor, when I sent him to Albany. In short, I have failed to meet from Mr. Preston that cordial co-operation and friendly assistance which I had hoped for, and on which the success of such an expedition so eminently depends. I feel pleasure, however, in saying that I can look upon this failure on the part of Mr. Preston in no other light than as an error of judgment, and his being too easily influenced by others.

With the above statement of the facts of the last month, and which I am ready to substantiate at any moment by the testimony of my officers and others, I beg leave to submit this, my report, to your excellency's kind consideration.

I have the honor to remain, your excellency's very obedient servant,

MAX FRANZ OTTO STROBEL,
Captain For. Leg.

To His Excellency Sir GASPARD LE MARCHANT,
Lieutenant Governor of Nova Scotia.

Mr. Remak. Was this paper ever delivered?

A. It was delivered to Mr. Crampton and Sir Gaspard le Marchant.

Mr. Van Dyke. Did Mr. Hertz say anything to you in reference to having advertised in any paper in Philadelphia?

A. Yes, sir, the advertisement was in Mr. Hertz's office, in the newspapers.

Q. Did he say anything to you as to his advertising?

A. He said he was obliged to have it advertised in order to get men.

Q. What advertised?

A. This proclamation. Mr. Hertz sent men to the office of the paper to see if it was advertised.

Q. When was that?

A. I cannot recollect the very date—it was before I went away with my company.

Q. Do you recollect the advertisement?

A. Yes, sir, I recollect the advertisement; I have seen it in the paper, but do not recollect the very day.

Q. What do you know of Mr. Hertz putting this (showing witness the *Pennsylvanian* containing the advertisement) in the paper?

A. Mr. Hertz says, I suppose by this advertisement we would get some men.

Q. Where did you last see Hertz, before sailing from Philadelphia with your men?

A. I saw Mr. Hertz on the boat. He came down in the morning to the wharf where we sailed from, and it was at that very moment he gave me the money, $25.

Q. On the boat Delaware, on which you sailed on Sunday morning, of March 16, 1855?

A. Yes, sir.

Q. Will you state to the court and jury whether you recommended to Mr Crampton a certain Colonel Burgthal?

Mr. Remak objected. Objection was sustained.

Question by Mr. Van Dyke. Is there anything else you recollect in connexion with Mr. Hertz that you have not stated? If there is, state it. Any conversations that you had with Mr. Hertz or Mr. Crampton about Mr. Hertz being engaged in this business.

A. I remember a conversation with Crampton about Hertz, where Crampton said he believed——

The question and answer were ruled out.

Q. Do you recollect any conversation Mr. Hertz had with any person, or any conversation you had with him?

A. I heard many conversations of Mr. Hertz with other officers who left for Halifax. It was a promise Hertz made to these men in the name of Mr. Howe, and through Mr. Howe in the name of the English government, to give them commissions in the foreign legion, if they would go to Halifax, if they were military men before, and so on; and when some of them would express doubts on the subject, Mr. Hertz would try and prove that he had really the power to promise.

Q. Anything else?

A. I remember there was some money given to the men by Mr. Hertz.

Q. Which men?

A. To the men who enlisted.

Q. What was money given them for?

A. To pay board to the very day they sailed, from the time of enlistment to the time of leaving.

Q. Who paid for the tickets?

A. I suppose Mr. Hertz—I do not know.

Q. Who gave the tickets?

A. Mr. Hertz did.

Q. For the seventy-eight you took?

A. Yes, sir.

Q. You say you had a hundred in your company; how happened it that you only took that number?

A. Afterwards some men were sent from Philadelphia.

Q. How did it happen that you first had one hundred men, and only took seventy-eight with you?

A. The other parties came on afterwards, and were put to my company as they came on, particularly men from Philadelphia.

Q. What became of this company?

A. It sailed on the 8th of August for Portsmouth, England, to equip for its destination.

Q. (Cards shown witness.) What are these?

A. These are the cards which were given to the men to get a passage on board the boat. Mr. Hertz got the cards; I do not know where he got them from.

Q. What is that on it?

A. It is H.

Q. Whose signature is it?

A. Mr. Hertz's.

Q. What is the meaning of N. S. R. C.?

A. It means Nova Scotia Railroad Company, I suppose.

The ticket was given in evidence ; the following is a copy :

N. S. R. C.
H.

Q. Did you take these tickets all the way to Nova Scotia?

A. Every man had one of these tickets, and they passed him on the boat.

Cross-examined by Mr. Remak.

Q. Did you go to see Mr. Hertz of your own notion, or did anybody request you to go to see him?

A. I was requested by Dr. Biell to see Mr. Hertz, as I had seen Crampton only a few weeks before.

Q. Did you know Hertz before that time, before Biell mentioned his name?

A. No, sir.

Q. You did not know him at all?

A. No, sir.

Q. You had already seen Mr. Crampton at the time Biell spoke to you?

A. Yes, sir ; Biell told me Hertz had a letter which he had shown him——

Mr. Remak. There is no use saying that. You saw Hertz on the 10th of March?

A. Yes, sir.

Q. Where did you see him?

A. At his office, 68 South Third street.

Q. Did you know the business of Mr. Hertz?

A. Yes, sir, he was enlisting men for the foreign service ; Mr. Hertz himself said so when I came up there.

Q. Was it not at his office you said people came in and enlisted, and entered their names in a book?

A. Yes, sir.

Q. (Showing book.) Here is the book presented to you; do you swear that this is the identical book you saw there?

A. Yes, sir.

Q. Were all the names here entered by the persons themselves, or by whom?

A. Not exactly all these names ; many of the men signed their names themselves, and others could not write, and Mr. Hertz or somebody wrote down the names.

Q. Now, be so good as to describe this book ; does it contain anything but the names and places of residence?

A. It contains the names of those men ; most of them I took with me, as my company, to Halifax.

Q. And contains the residence of some?

A. Yes, sir, of some.

Q. It contains nothing else?

A. It contained at that time the names of several officers willing to go ; it contains now but those names.

Q. You say you received money from Mr. Hertz?

A. Yes, sir.

Q. For what purpose?

A. I received money from Mr. Hertz, and was obliged to give him a kind of note, in which I stated I had received so much money, and it would be repaid.

Q. (Showing witness a paper.) Is this paper signed by you?

A. Yes, sir.

The paper was read as follows:

"I received from Mr. Hertz $5 on my word of honor.

"MAX F. O. STROBEL."

Mr. Remak. The figures are blotted, and it looks as if it had been altered from $5 to $25.

Witness. The signature is true, but I believe the 25 is false. I actually received, on my word of honor, from Mr. Hertz $10, but I never remember having given Hertz a receipt for this $25 I received on board the boat; I never remember, but there is a possibility.

Q. You stated in your examination in chief that you received $25 the day you started?

A. Yes, sir, I received $25 that day.

Q. You state now you do not remember having given a receipt for it?

A. I do not remember; I acknowledge this signature—that might be another note I gave to Hertz, stating I only received $5. This is my signature.

Q. You received $25 on that day, and this paper states in number 25?

A. It states here $25. I do not recollect signing any paper for $25. I recollect saying to Mr. Bucknell I received that money.

Judge Kane. Is this material?

Mr. Remak. It is for the purpose of showing that money has been loaned to the witness.

Q. You say you were present when several different men came in at different times and signed their names in that book? What were the conversations between Hertz and those persons?

A. The conversation was that he showed the parties the proclamation or advertisement, and he said there is a foreign legion as you see in Halifax; and if you feel able and disposed to enter this foreign legion in Halifax, I will give you the means to go to Halifax as a soldier in that legion—that is, if you are willing to go to Halifax and be enlisted for this foreign service.

Q. Can you swear that Hertz ever said to enlist as a soldier for the foreign service?

A. I can swear that he said he wanted them to go to Halifax for the purpose of enlisting for British service.

Q. Did he pay anything to them?

A. He paid to several of them, but not every one—to some of them he paid one dollar; to some 25 cents, and to some 50 cents.

Q. Do you recollect the names of any of the men to whom he gave 25 cents?

A. To Purde, and several others—their names are in the list.

Q. Were any of those people very poor?
A. Yes, sir, some of them were.
Q. Did you know that these people were actually in want of food?
A. Not in want of food.
Q. Do you believe that these people had any money at all?
A. I believe they had none.
Q. Were they not looking out for work?
A. They had been looking out for work.
Q. And could they get it?
A. They said they could, but as they were detained they must be paid.
Q. They could get work they said?
A. If they would not be retained.
Q. Did these people use the word retained?
A. They said they could get work if they were not kept waiting here doing nothing, and being promised every day that this vessel should sail for Halifax
Q. Then these people did not employ the expression retained?
A. Well, they were retained.
Mr. Remak. You have to give the conversation exactly as it took place; be very strict; what language did these people speak?
A. In the German.
Q. Then they had no idea of the word "retained?"
A. We have a word in German that means as much.
Q. What is it?
A. "Augeholten."
Mr. Remak. May it please your honor, that word means detained.
Q. Did not these people mean to say that their time was wasted by being unemployed?
A. No, sir, they said, or meant by saying so, that their time was taken by Mr. Hertz.
Q. Did not some people come into the office who declined to go to Halifax?
A. Not that I remember. Some of them came once, but never afterwards.
Q. What did Hertz say when they declined—if you recollect they did decline?
A. I do not remember that any one declined.
Q. Did Mr. Hertz offer them anything the moment he spoke of going to Halifax?
A. Not at that moment.
Q. Mr. Hertz did not offer them anything when he asked them to go to Halifax?
A. No, sir.
Q. Did he actually ask them to go to Halifax?
A. Yes, sir.
Q. Did not he leave it optional? Did not he represent the matter that they would get employment there?
Witness. Get employment in Halifax?
Mr. Remak. Some employment.

Witness. No, sir, that could not be, because this advertisement was lying on the table, and for that purpose the men came up.

Q. When the men came in, you say Hertz did not offer them anything; when they were ready to go to Halifax, what did Hertz say?

A. Mr. Hertz said, I have a vessel ready for you to start in a day or so.

Q. Did he state for what purpose this vessel would start?

A. For conveying these men to the "foreign legion" at Halifax.

Q. You stated that he gave some of the men one dollar, and some twenty-five cents; to how many of the men did he give anything at all?

A. It is very difficult to say.

Q. Did he give it to twenty?

A. I suppose that is the number.

Q. Have you been present every time he gave these men something?

A. Not every time, but he gave to that many in my presence.

Q. Then you remember that he gave to more than twenty?

A. Not to more than twenty. I cannot say that he gave to more than twenty.

Q. Then you do not know if he gave to any one else?

A. No, sir.

Q. The names you remember mention now.

A. Barrier, Blecher, Brining, Foley, Worrell.

The court here overruled the question.

Q. You stated in your examination in chief that some of the men received money to board?

A. Yes, sir.

Q. How much did they receive?

A. I cannot tell whether Hertz gave three shillings or four shillings; to some he gave three, some four, and perhaps some a dollar.

Q. Did Mr. Hertz ever promise you a commission?

A. Yes, sir.

Q. Where did he promise you?

A. In his office.

Q. In whose presence?

A. In the presence of Mr. Rumberg and Lieutenant Essen.

Q. Did he show you any authority for doing so?

A. I believed he had, because he made me himself acquainted about the letters and orders he had received from the British government, and I showed him my letters, although I never saw his letters. He promised me a commission.

Q. Did Mr. Hertz derive any benefit from all the transactions you know of?

A. I cannot tell.

Q. You remember that you said in your examination in chief, that Mr. Hertz said himself that what he had received did not cover expenses?

A. At that time.

Q. Do you know, from your own knowledge, that Hertz has received, at any other time, any more money?

A. I cannot swear that Hertz received more money than he expended, but I can swear he received money.

Q. Then he did not derive any benefit from his business transactions?

A. I do not know.

Q. As far as you know?

A. As far as I know, no; but I cannot see into his business matters, certainly.

Q. Could Mr. Hertz have any direct benefit from the fact of any of these men going to Halifax?

A. Yes, sir.

Q. In what manner?

A. He would receive $4 for every head.

Q. Would the $4 come from the man himself?

A. No, sir; it would be paid by the English government; the man could not pay, but the English government paid $4 for every head.

Q. Can you say whether any agreement has taken place between Hertz and you, or with any of these men, with regard to the transaction?

A. Yes, sir.

Q. What was the character of it?

A. The agreement was, that I was to take this company to Halifax, and I was introduced to the men of the company as their captain; and I had to bring them up to Halifax.

Q. Did you derive any benefit from this matter? You received money, did you not?

A. I received no money except that necessary to take the men to Halifax, and their tickets.

Q. You received no money?

A. No money for myself, but money to take the men there, for the government.

Q. You received no money for yourself?

A. No money for myself, from the government. What I received for doing this, was the commission.

Q. Did you receive from Hertz any money?

A. I received as a private matter $10 from Hertz; but I received $25 to feed the men on the boat.

Q. Then, Mr. Strobel, had you any direct authority from the English government at the time?

Witness. Direct authority to do what?

Mr. Remak. Any direct authority at all. I do not care what it is. Did you hold any commission?

A. Just the commission as promised by Hertz.

Q. You had no commission?

A. I had no commission at that time.

Q. Then you cannot say you were at the time the representative of the English government, or agent of that government?

A. Certainly, I was insomuch an agent that I agreed with the English government to bring men to Halifax.

Q. You considered yourself so?

A. I did not consider, I thought so.

Q. When did you agree with the English government?

A. So early as the beginning of April, with Mr. Crampton.

Q. Did you agree to take the identical men you started with on the 25th of March?

A. No, sir, not those men, but any men.

Q. Then you had no other authority but what you thought you had from Hertz, when you took these men?

A. Not for bringing these very men I named here.

Judge Kane. The witness says he had authority from Mr. Crampton to take such men as should be enlisted, and that it was from Hertz that he got the directions of the particular persons enlisted, and who were to be carried on.

Q. Did you make any promise to Hertz in return for the so-called authority he gave you?

A. Yes, sir.

Q. What was the promise?

A. I promised Mr. Hertz that upon arriving in Halifax I would state that Mr. Hertz had sent these men, and that he had a great many more men, and had made arrangements with parties in New York, but was not able to send them, and I was to secure him every man he sent from Philadelphia to Halifax.

Q. Did you ever pay to Mr. Hertz afterwards anything for the trouble he took to send men to Halifax?

A. I did not.

Q. Do you know whether anybody else paid Hertz for the trouble he took on that day, or any other time?

A. I do not know; I know that Hertz received money for the men in New York.

Q. Did you ever see Mr. Crampton in the presence of anybody else?

A. Yes, sir.

Q. Who was present?

A. I saw Mr. Crampton in the presence of Dr. Ruess, for instance, Major Boutz, Sergeant Burgit, and Rose, and others; I travelled with Crampton and Preston in company with other gentlemen up to Quebec from Halifax; these instructions were in the handwriting of Crampton.

Q. I want to know if Hertz ever read those instructions?

A. I do not know whether Mr. Crampton sent him a copy of them or not.

Q. Then you do not know whether he had ever any knowledge of these instructions?

A. They were written after I left here, and I could, therefore, not tell.

MONDAY'S PROCEEDINGS—*September* 24, 1855.

Horace B. Mann, sworn. Examined by Mr. Van Dyke.

Q. Are you engaged in the Pennsylvanian office?

A. Yes, sir.

Q. (Paper shown witness.) Do you know whether that advertisement was ordered to be published there?

A. As regards ordering the advertisement I do not know anything about it, but that is a copy of the Pennsylvanian.

Q. Do you know anything about the discontinuing of it?

A. Yes, sir, it was ordered to be discontinued by Mr. Hertz; I discontinued it at his order.

Q. Is that the receipt for the advertisement?

A. That is the receipt for the payment of that advertisement; Mr. Magill is the person who received the advertisement; the paper in which it appears was published March 16th, and the receipt is dated March 15th.

The receipt was here read in evidence as follows:

PHILADELPHIA, *March 15th*, 1855.

Lieutenant-Governor of Nova Scotia,

To Advertising in the PENNSYLVANIAN,

2 Squares *for one month* - - - - - - $5 00

Received Payment for the Proprietor,

WM. MAGILL.

Max F. O. Strobel recalled. Examined by Mr. Van Dyke.

Q. You have been sworn?

A. Yes, sir.

Q. You are acquainted with the handwriting of Mr. Howe?

A. I have seen it.

Q. What position did he hold in March and February, 1855?

A. He was the general agent of the British government, in the States, for this recruiting.

Q. (Paper shown witness.) Will you look at that paper, and say whether it is in his handwriting?

A. I believe it is Mr. Howe's handwriting; I have seen him write.

The paper was here read in evidence, Mr. Van Dyke stating it was the original of the advertisement which appeared in the papers in regard to this matter. It is as follows:

"The lieutenant-governor of Nova Scotia is empowered by her Britannic Majesty's government to raise any number of men which may be required, to serve in the foreign legion.

"Depots are established at Halifax, and all able-bodied men, between the ages of twenty and thirty-five, who may present themselves, will be enlisted.

"The terms of service will be three or five years.

"Officers who have seen service are eligible for commissions.

"Surgeons, speaking the continental languages, or some of them, will be required.

"Pensions or gratuities for wounds or eminent services in the field will also be given.

"On the expiration of the term for which they enlist, the troops will be sent to their native countries, or to America."

Q. You said you are acquainted with Mr. Crampton's handwriting?

A. Yes, sir.
Q. (Paper shown.) Is that his writing?
A. That is Mr. Crampton's handwriting.
Question by Mr. Cuyler. You have seen him write, you say?
A. Yes, sir.
The paper was here read in evidence, as follows:

"SATURDAY, *January* 27, 1855.

"SIR: I should be happy to see you at any time you may choose to call, to-day or to-morrow.

"I am, sir, your most obedient servant,
"JOHN F. CRAMPTON.

"Mr. HERTZ."

[Envelope.]

MR. HERTZ,

J. F. C. *Willard's.*

Q. (Another paper shown.) Is that also in Mr. Crampton's handwriting?
A. Yes, sir; that is Mr. Crampton's handwriting.
The paper, which was read, is as follows:

"WASHINGTON, *Feb.* 4, 1855.

"SIR: With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related.

"I am, sir, your obedient servant,
"JOHN F. CRAMPTON.

"H. HERTZ, Esq."

[Envelope.]

Paid—J. F. C.

WASHINGTON, Feb. 4, D. C.

H. HERTZ, ESQ., 424 N. Twelfth street, Philadelphia.

Q. Do you know Mr. Wilkins's hand-writing?
A. Yes, sir.
Q. Is he provincial secretary?
A. Yes, sir.
Q. (Paper shown witness.) Is that his writing?
A. It is. I have seen him write; that is his signature on the back of it.
Q. Do you know whether Hertz was in Halifax in June?
A. Yes, sir, he was in Halifax in June.
Q. Do you recollect the day?
A. I cannot recollect what day; it was in the beginning of the month.

Q. In whose handwriting is the direction on the envelope?
A. I believe it is Wilkins's, too.
The paper, with envelope, was read in evidence, as follows:

"PROVINCIAL SECRETARY'S OFFICE,
"*June* 11, 1855.

"SIR: I am in receipt of your letter of this date, and am commanded by his excellency Sir Gaspard le Marchant to inform you that in reference to the claim advanced in your communication, Mr. Howe, previous to his departure for England, distinctly stated to his excellency that the moneys which you had received on account more than cancelled any claim that you might prefer.

"Any instructions given to Mr. Howe by Sir Gaspard will speak for themselves, whilst Mr. Howe will best account for his own acts on his return from England.

"In his absence, nothing can possibly be done by Sir Gaspard, in relation to yourself.

"You must consider this a final answer given by his excellency's command.

"I have the honor to be, sir, your most obedient servant,
"LEWIS M. WILKINS.

"Mr. H. HERTZ."

[Envelope.]

ON HER MAJESTY'S SERVICE.

MR. H. HERTZ.

Provincial Secretary's Office.

Q. Are you acquainted with the British secretary of legation?
A. Yes, sir, I have seen him.
Q. Do you know his handwriting?
A. I have seen his writing, but never saw him write. I never had any conversation with Mr. Lumley. I always addressed my letters to Mr. Crampton or Mr. Lumley; I never received any replies from Mr. Lumley.
The defendant's counsel admit the paper to be in the handwriting of Mr. Lumley, and it is read in evidence as follows:

"WASHINGTON, *May* 31, 1855.

"SIR: In the absence of Mr. Crampton, I beg to acknowledge the receipt of your letter of the 20th instant, although I am not aware that I have had the advantage of making your acquaintance. I beg to inform you, as secretary of her Majesty's legation, that no charge against you, of the nature to which you refer, has been made to me. It is, therefore, superfluous to add that I have never expressed the opinion reported to you as having been used by me.

"I am, sir, your most obedient servant,
"T. SAVILLE LUMLEY."

[Envelope.]

Paid—T. S. L.	
WASHINGTON,	HENRY HERTZ,
May 31, 1855,	424 North Twelfth street, below Coates,
D. C.	Philadelphia, Pa.

Q. Did you know the vice-consul at New York?
A. Yes, sir.
Q. What is his name?
A. Mr. Stanley.
Q. Do you know his writing?
A. Yes, sir, I have seen him write.
Q. (Letter shown witness.) Is that a letter of Mr. Stanley's?
A. Yes, sir.
The letter and envelope were read in evidence as follows:

"NEW YORK, *June* 19, 1855.

"SIR: I am obliged to you for the cutting from the newspaper which you forwarded with the note of the 17th, both being received by me yesterday. I do not understand the spirit evinced by the writer of the newspaper paragraph. I am not yet aware of any United States laws being broken in the matter to which he has reference, and have not the slightest interest therein.

"Regarding your claim against theNova Scotia government, I have not received any communication from that quarter, as you led me to expect would be the case. As I informed you when in the city, it is not possible that I should be acquainted with the subject; but if so ordered, I shall be happy to remit you the amount.

"I have seen Mr. Mathew, who happened to be in New York, being in hopes that I might procure through him some information which would aid you in this matter; but being unsuccessful in obtaining any, it is utterly out of my power to forward your views.

"Remaining your obedient servant,

"C. H. STANLEY."

[Envelope.]

NEW YORK,	MR. H. HERTZ,
June	424 North 12th street,
19.	Philadelphia.

Q. (A card here shown witness.) Do you recollect that card?
A. Yes, sir.
Q. It is written in what language?
A. In German.
Q. Do you know whose writing it is in?
A. It is a card written by Mr. Benas at the request of Mr. Hertz.
Q. Who was Mr. Benas?
A. He was at that time with Mr. Hertz; I do not know Mr. Benas

himself. He was with Mr. Hertz, and this was brought to me by a man who came up to Halifax and enlisted in my company.

Q. Did he go with you?

A. No, sir, he was sent to my company at Halifax by Mr. Hertz, and he brought this card to me, recommending this man to me as secretary of a company.

Q. This man was enlisted in your company?

A. Yes, sir.

Q. Before you left?

A. No, sir.

Q. He came on after the company left here, then?

A. Yes, sir.

By Mr. Cuyler. Did you see this card written?

A. I could not have seen it, because I was in Halifax, and this man brought it up there.

Q. Do you know Mr. Benas, who signs it?

A. I know him now; I did not know him at that time.

Q. Are you familiar with his writing?

A. I never saw him writing, and cannot say of my own knowledge that this card is in his writing, but it was brought to me from this very man.

Mr. Cuyler objected to the reading of the card in evidence.

It was shown to the jury; but as it was in German, few read it. We present a translation:

"I recommend to you the bearer of this card, Mr. Sporer, an excellent and perfect penman; if it lies in your power to obtain for him a position as clerk in your company, you will thereby greatly serve me.

"M. BENAS.

"By request of H. Hertz."

Q. Do you know Turnbull?

A. Yes, sir.

Q. What was he in June, 1855?

A. He was at that time an agent for Mr. Crampton.

Q. Where is he located?

A. He was sent to the west, to Cincinnati, to aid Colonel Korpony.

Q. (Letter shown witness.) Is that his letter to you?

A. That is Mr. Turnbull's letter to me from Cincinnati.

Mr. Van Dyke offered the letter in evidence.

Mr. Cuyler objected.

The objection was sustained and the letter ruled out.

Charles Rumberg, sworn. Examined by Mr. Van Dyke.

Q. What is your business?

A. I have been editor of the Philadelphia German Democrat, and I am now editor of a German paper at Pottsville, and co-editor of the Adopted American here.

Q. Will you state whether you have ever been in the army?

A. Yes, sir, I have been in the army of several German states. I have been captain. I came to this country nine years ago.

Q. State whether you ever saw Mr. Crampton?

A. I have not seen Mr. Crampton. I have seen Mr. Mathew.

Q. Will you state what took place between you and Mr. Mathew?

A. After having read the proclamation and resolution of the British government for enlisting able-bodied men for the "foreign legion"—

Q. That is, the one passed in Parliament?

A. Yes, sir; asking for recruiting able-bodied men for the "foreign legion"—I went to Mr. Mathew, and said to him that I could enlist from 400 to 500 men. Well, I made no arrangements in relation to the enlistment with Mr. Mathew, but I gave him a letter to the British Minister of Foreign Affairs in London, and he told me he would transmit it there.

Q. How long after that did you see Mr. Howe?

A. Six or eight weeks after that.

Q. Where did you first see him?

A. He came to my office in Third street, and asked me to agree with him as to the terms for enlisting men for this legion, and I replied to him that I would come on another day to see him for the arrangement of that matter. I went to him, and met there Mr. Hertz.

Q. Where at?

A. Jones's Hotel.

Q. What took place there?

A. After having some conversation with him, I considered it too hazardous and dangerous to go in that concern, and then I retired. I declined to engage.

Q. Did you see him afterwards?

A. Yes, sir; but at that time Mr. Howe promised to give me a commission in the "legion."

Q. Was Mr. Hertz present at that time?

A. Mr. Hertz was present at that time.

Q. What else did he say to you?

A. That was all.

Q. What inducement did he hold out to you in order to get you to go into this business?

A. I did not know at that time precisely that the laws of the United States forbid the recruiting; and not believing it was against the law, I would have gone into it; but after having consulted with many of my friends, I came to the resolution to decline.

Q. Did you see him afterwards?

A. No, I did not see him after that.

Q. (The original draught of the proclamation which Mr. Strobel testified was in the handwriting of Mr. Howe, and is given above—see page 144 for this paper—was here shown the witness, and the question was asked him whether he had ever seen it?) He answered, I have seen that paper before; I have translated it, and it has been inserted in the Philadelphia Democrat, German Democrat, and Free Press.

Q. Who asked you to translate and insert it?

A. Mr. Hertz.

Q. Did you ever go to Mr. Hertz's office?

A. I have been to it once or twice; it was only to see what was going on.

Q. Did you ever go to collect money for his advertisement?

A. No, sir. I think Mr. Murris, the clerk, did that.

Q. What was going on there when you went there?

A. I have seen there many men, but it was not my business to look at it.

Q. Did you ever ask Hertz, or did he ever tell you without being asked, how many men he sent to Halifax?

A. Yes, sir, he told me he sent 100 or so on to Halifax.

Q. Did he say what he sent them for?

A. No.

Q. Did he tell you who took them?

A. It was only in a conversation in the street, and I was not particular.

Q. Did he ever say anything to you in reference to your going there yourself to take the command?

A. Yes, sir, he has told me to go, and I have replied that I would not.

Q. How often did you see Hertz in the presence of Howe?

A. I believe twice.

Q. When was the second time?

A. That was when I declined.

Q. Was Mr. Hertz with Howe when you saw him at your office?

A. No, sir, there was nobody with him.

Q. You only saw him, then, once at your office and once in the presence of Mr. Hertz, at Jones's Hotel?

A. Yes, sir.

Cross-examined by Mr. Remak.

Q. Did you not know Hertz before Howe introduced him?

A. Yes, sir, I have spoken to him.

Q. You have stated that at first you were inclined to go into this matter. Did not you write in your paper articles in favor of the "foreign legion?"

A. No, sir.

Q. Did not your paper contain such articles?

A. I believe not.

Q. Do you not remember that the democratic paper, at whose head you were at the time, had articles against it?

A. I believe it had articles against it.

Q. And were not you, yourself, in favor of this "foreign league?"

A. No, sir, I was not in favor of it.

Q. Did you not induce Hertz to put in that advertisement?

A. No, sir; he desired me. I translated it.

Q. Did not you go to Mr. Howe in order to induce him to do something in relation to this translation?

A. Not to my recollection: nothing of the kind.

Mr. Van Dyke here showed witness an advertisement in a German paper, and asked him whether it was a translation of the original paper which was handed to him?

A. It is the translation.

Q. You put that in at whose request?

A. For a month, I think.

Q. Who asked you to publish it?

A. I published it at the request of Mr. Hertz.

Question by Mr. Cuyler. Where did he (Hertz) ask you to translate it?

A. He asked me to translate it and insert it in our paper.

Question by Mr. Cuyler. At what place did he ask you that?

A. I remember not; but I believe it was in his office.

Mr. Cuyler. You are perfectly sure that Hertz asked you?

A. I am sure Hertz asked me to translate it and insert it in the *Free Press* and *Philadelphia Democrat.*

Mr. Cuyler. Did Hertz personally himself ask you?

A. Yes, sir.

Mr. Van Dyke here gave in evidence the German translation of the original proclamation, as published in the German papers of this city. The original can be found in Strobel's testimony, on page 144.

Thomas L. Bucknell sworn. Examined by Mr. Van Dyke.

Q. Will you state to the court and jury all you know of this matter?

A. Well, on the 18th of March it was I heard that the honorable Joseph Howe, who was either president or director of the railroads in the province, was in New York, and I went on in the 5 o'clock train. I wished to see the procession of the 17th of March, "St. Patrick's day," and I thought I might see both together. I saw him at half-past 11 o'clock, on the 16th, at Delmonico's Hotel. I spoke to him of what I had visited New York for, and he told me he would see me again, and see what he could do about giving me employment as civil engineer. He said, you can be of use to me in one or two matters while in the city; he gave me some ten sovereigns, I think, to go to bank to get changed into American money, and buy some stationery. Well, I bought the stationery, and got the money changed, and went back and gave the money up, and that was the last I saw of him on that day. On the 17th I called again, and he asked me to dine with him. I dined with him about half-past 4, and showed him my testimonials from different engineers. Two or three gentlemen came in while at dinner, and the conversation stopped about what he could do for me. I do not think I saw him again until Monday, and he asked me if in the course of my walks through the city I would call for him at the Metropolitan Hotel, and see if there were any letters for him. I called there and got two letters, and brought them to him; he had gone out for the evening, and I left them with the book-keeper; I forget now whether I sent them up to his room or left them with the book-keeper; I called next day, I think it was on Tuesday, and he asked me whether I would like to go on to Philadelphia and Washington; I said it was all the same to me where I go, for I have nothing else to do: so he gave me a parcel tied up—I don't know whether it was directed or not—to leave with a man by the name of Hertz, at No. 68 South Third street, Philadelphia; I brought the parcel on, and called next morning at No. 68 South Third street, and asked if there was a man by the name of Hertz there: there was a small-sized man in the room, and he said that Mr. Hertz was in the next room, and he would call him; he called him, and he came out and said, I am Hertz;

I then said, the honorable Joseph Howe directed me to leave this with you, and you will please give me a receipt for it; I then left the parcel. That was all the conversation I had with him on that occasion: I left the office, and went with some printed or sealed documents to Washington.

Q. From him?

A. No, sir, from Howe. I did not get any answer to those. I came back again. The sealed documents were directed to Mr. Crampton. He, Mr. Crampton, asked me when I left New York. I told him about leaving this parcel at Hertz's, and he told me he would recommend me to call back that way and get it again.

Q. You are sure it was he?

A. Yes, sir, I am certain. He told me to call that way again. I called at Hertz's office on my way back, and gave him the receipt I had taken for the papers, and took away the papers I had left at his office. That was the last I saw of Hertz until I saw him at the office.

Q. What papers were they?

A. They are the printed circulars that came from Halifax; the circulars with the British coat-of-arms upon them.

Judge Kane. The witness spoke of that as an enclosed parcel.

Witness. There was no cover on it; there was only a piece of twine around the parcel, and I could see what they were. I took them when I came back, and rolled them up myself, and brought them back to New York. [Circular shown witness with the British coat-of-arms upon it, a copy of which is already published. See copy on page 114.] That is the circular I saw.

Q. You went back to New York after that?

A. Yes, sir.

Q. Did you see Howe?

A. Yes, sir.

Q. Were you there when Mr. Strobel came?

A. Yes, sir; I saw Mr. Strobel.

Q. Did you give him any money?

A. No, sir, not to Mr. Strobel. At the request of Mr. Howe, I gave $100 to Mr. Hertz.

Q. To Mr. Strobel and him together?

A. Yes, sir.

Q. At the Astor House?

A. No, sir, at Delmonico's.

Q. What did Hertz do with the money?

A. I do not much mind.

Q. Did you see what he did with it?

A. I saw him get a receipt for part of it from Mr. Strobel; I believe it was $80.

Q. Did you see the men that Strobel had there?

A. No, sir.

Magnus Benas affirmed. Examined by Mr. Van Dyke.

Q. Where do you live?

A. No. 218 North Fourth street. My business is pocket-book making. I know Hertz.

Q. State what you saw in reference to these enlistments?

A. I got acquainted with Hertz about eight days before he was arrested. I was down at the wharf as the steamer Sanford left, and I was in his office on the same day, and afterwards. I got in his employ about a week afterwards.

Q. You got in Hertz's office?

A. Yes, sir, in Mr. Hertz's employ.

Q. About eight days before he was arrested?

A. No, sir, after he was arrested; about the 2d of April.

Q. Still in the same office?

A. Yes, sir.

Q. Well, then, what did he engage you for?

A. Well, for transacting his business. It was a commission office.

Q. Did you write that card to Halifax at his request?

A. I wrote that card on my own account. It was for an acquaintance of mine, and I wrote it on my own account.

Q. Do you know anything about the office for recruiting, and Mr. Hertz's connexion with it?

A. Well, I heard something, but I did not know anything before.

Q. Did he tell you anything about the office kept by the Baron Von Schwatzenhorn? State what you know about Hertz engaging Von Schwatzenhorn?

A. There was a conversation between the Baron Von Schwatzenhorn and Hertz.

Question by Mr. Cuyler. In your presence?

A. Yes, sir; they met at 68 South Third street, and agreed that Von Schwatzenhorn should see to getting the men, and Hertz procured the vessels to bring them to Halifax: and accordingly Hertz sent me at different times to the office of the English consul to inquire about vessels loading for Halifax: merchant vessels—mostly schooners.

Q. That was, for the men whom Baron Von Schwatzenhorn was getting?

A. Yes, sir. I was about four or five times in the office, and got about five vessels; two of the vessels I recollect the names of; they were the "Gold Hunter" and "Bonita."

Q. Were men sent in these vessels?

A. Yes, sir; they were sailing-vessels, direct for Halifax.

Q. Were they English vessels?

A. Yes, sir, I guess so; I do not know sure.

Q. Did you see any of the vessels?

A. Yes, sir, I saw them all.

Q. Did you see the names of any of them?

A. Yes, sir, I told you.

Q. Where did they hail from?

A. I do not know.

Q. How many men did you ever see off in a vessel?

A. I saw them off, once four men, and another time six, but never more than six were in one vessel.

Q. What was the character of these vessels?

A. They were schooners.

Q. Was it at the request of Hertz that you went to the British consul's to know when merchant vessels were going to sail, for the purpose of sending the men Baron Von Schwatzenhorn had engaged?

A. Yes, sir.

Q. Where did the Baron Von Schwatzenhorn keep his office?

A. He lived at the corner of Fourth and Brown.

Q. This was after the arrest of Hertz?

A. Yes, sir, it was.

Q. Do you know at whose request the Baron commenced to engage men?

A. I do not know.

Q. (Card shown witness, a translation of which may be found on page 148, ante.) Look at the bottom of that card, and say if you have not stated at whose request you wrote it?

A. I did it of my own accord, and wrote that down to let Mr. Strobel know that I was in the employ of Hertz.

Q. Is it not written "at the request of Mr. Hertz" at the bottom?

A. I wrote it so, but it was on my own account.

Q. Do you know Schuminski?

A. Yes, sir, I saw him. He was not engaged at the request of Mr. Hertz, but of the Baron Von Schwatzenhorn. He was with the Baron.

Q. They acted together?

A. Yes, sir.

Q. Do you know how many men the Baron got altogether?

A. No, sir, I do not know; I guess about twenty or twenty-six, I cannot tell for sure.

Q. Did Hertz ever tell you how many men he sent altogether?

A. No, sir.

Cross-examined by Mr. Remak.

Q. Mr. Baron Von Schwatzenhorn was not requested, then, by Mr. Hertz to send men?

A. No, sir.

Q. Do you know Winsor and other gentlemen who procured the vessels?

A. I do not know anything about it.

Q. Was Mr. Hertz exactly in the position of Winsor and other gentlemen who had vessels at their disposal?

A. I do not know. Mr. Hertz sent me to the English consul to inquire about vessels loading for Halifax—that is all I know. I know they were for sending the men to Halifax that the Baron Von Schwatzenhorn procured.

Q. Did you not know that the Baron was indicted in this court?

A. Yes, sir, I knew that.

By Mr. Van Dyke.

Q. Do you know where he is now?

A. In Halifax.

Q. What is he doing?

A. I do not know.

Charles Burgthal sworn. This witness was a German, who could not speak English, and Mr. Theodore H. Oehlschlager was sworn as interpreter.

Examined by Mr. Van Dyke.

Q. Where are you from?

A. From Vienna.

Q. In what service have you been?

A. Military.

Q. In what military service?

A. The Austrian.

Q. What official position did you hold?

A. I was a major and lieutenant-colonel in the engineer service.

Q. When did you come to this country?

A. The 28th of September, 1848.

Q. Where had you been located with your command before you came here?

A. In Hungary.

Q. At what place?

A. At Komorn.

Q. Did you at any time see Mr. Crampton in reference to recruiting for the British government?

A. Yes, sir.

Q. State when you first saw him, and how you happened to go to see him?

A. I was engaged as superintendent on the Panama railroad, but, being sick, returned to the United States and went to see Mr. Marcy and Mr. Cushing and other gentlemen, and when in Washington became acquainted with Captain Strobel. I knew Mr. Strobel previous to this, five years before. Mr. Strobel informed me that Mr. Crampton was seeking officers for this business. In the end of February I went out with Mr. Strobel to see Mr. Crampton. I went to Mr. Crampton's with Mr. Strobel; he was not at home; he was at a dinner party at Mr. Marcy's. I left my card there, and went to Baltimore to my family. Four or five days afterwards I received a telegraphic despatch from Mr. Crampton requesting me to return to Washington. The next day I did so. I went over there, and was with Mr. Crampton, and held a conversation of over an hour with him relative to this recruiting business. He made me a proposition requesting me to enter the regiment as colonel. I observed to him that I would not enter the service unless there was a perfect security as to my getting a commission, as I did not wish again to enter the service of a despotic power.

Q. What do you mean by "perfect security?"

A. I mean a commission from the Queen, as no one else was able to give a commission.

Q. What else occurred?

A. Then I came to Philadelphia in the beginning of March, and saw Strobel here; I also made the acquaintance of Mr. Hertz; about the 10th or 12th of March, Mr. Howe came here and visited me.

Q. Did Mr. Howe call on you of his own accord?

A. He looked for me and visited me of his own accord, having heard from Mr. Rumberg that I was here.

Q. State the conversation between Mr. Howe and you?

A. He made the same proposition. He stated that he had officers here, in Baltimore, in New York, in Chicago, and in different parts of the country. He then told me that he would obtain for me a commission; that he had authority from Mr. Crampton so to do. I refused the offer, having other employment here at the time. Afterwards Mr. Howe visited me with two or three other gentlemen, and invited me to Jones's hotel. I went to him and dined with him and these other gentlemen. I informed him at dinner of my opinion in relation to this recruiting business; that it had been forbidden in the United States. He showed me two placards, one in German and the other in English, and also a journey card and ticket, and told me that he did not think he could be laid hold of in the matter.

Mr. Remak. He said that he felt certain that nothing could be done to him?

A. That nothing could be done against him in the United States. He also requested me, if I came to New York, to visit him at Delmonico's hotel; I went there, but did not meddle any further in the matter, nor go to see him.

Q. Did you at any time see Mr. Hertz, or have any conversation with him?

A. I saw Mr. Hertz very often when I came to see Mr. Strobel.

Q. Where at?

A. Mr. Hertz's office, in Third street.

Q. What was he doing?

A. I do not know; he was writing; people came there for him—they came to see him.

Q. Did Hertz have any conversation with you?

A. I said nothing to him; I simply saluted him.

Q. Had he any conversation with you in reference to recruiting men?

A. Yes, sir; I think he spoke of it.

Q. What did he say?

A. He said he sent people to Halifax, but not for military service; that he had a commission to do so.

Q. What did he send them for?

A. I had my opinions as to why they were sent there, but I did not tell him, nor did he tell me.

William Budd, sworn. Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Hertz?

A. Since the 13th of March.

Q. Where were you made acquainted with him?

A. I was introduced to him as the agent in this city for the recruiting for the "foreign legion."

Q. State what took place?

Judge Kane. What was the character of the introduction?

Witness. He was introduced to me as the agent by my friend, Mr. Strobel. We went down there one morning, and, after some preliminary conversation between Hertz and Strobel, he introduced me to him. Strobel remained in the outside room, and he asked me whether

I would go to Halifax. He said that he was agent of the foreign legion, and asked me whether I had called to receive information about it; I told him I had; he then told me that commissions were to be issued for men who would go on there, and he supposed that I would get one; I then gave him my address, and he requested me to call again, and he would let me know when the first expedition started—to stop in every day and see him, and see what was going on; I did so. He engaged me to go on there for the purpose of obtaining a commission.

Q. State the conversation fully, that occurred between him and you, in reference to your going there?

A. Well, we had a great many conversations; almost every day we talked about it.

Q. When did you first agree with him to go to Halifax for the purpose of obtaining a commission? State the conversation that then took place.

A. I did not agree on the first interview; I told him I would think about it.

Q. What did he say at that interview?

A. He promised me a commission.

Q. Did he ask you to go with that view?

A. Yes, sir, he did.

Q. And you told him you would think about it?

A. Yes, sir.

Q. What next took place?

A. After two or three days, he asked me if I had made up my mind; I told him yes, I would go to Halifax and see what took place when I got there. He then intended to send me with Captain Strobel, but I concluded not to go; there were not men enough going, and I preferred to hear from him and hear how he got on when he got there. It was on a Sunday when he started, and I did not go with him.

Q. What did you do from the Sunday up to the time you started?

A. On Monday, Hertz was in New York.

Q. Who had charge of the office while he was gone to New York?

A. Bosschart and myself were there, and we took several persons down who came in there.

Q. Did you do that at the request of Hertz?

A. We did at his request.

Q. Who was Bosschart acting for?

A. I understood he was acting for Hertz.

Q. Did you raise any men in that time?

A. About twenty-five or thirty.

Q. What did you do with them?

A. The day before we started they all came there, and we gave them tickets and told them to be down to the New York boat next morning. I went down there after I received instructions from Hertz where to go to in New York.

Q. What instructions did you receive from him?

A. He told me to go to Delmonico's hotel, and call and see Bucknell. We started, and did not get any further than the navy yard, when we were arrested.

Q. You took the men?

A. I did not take them; they were down on the boat.

Q. They were in your command?

A. I had no real command; I was considered as leader of the party.

Q. By arrangement with Hertz?

A. Yes, sir.

Q. How many had you?

A. About thirty when we started. I only saw twelve when the arrest was made. I think there were thirty. It was on a Wednesday. I am not sure whether it was on Wednesday following the Sunday that Strobel went on with men.

Q. Did you see the men go on the boat?

A. I did, sir, and told several of them to hurry up, or they would lose their passage. I took the tickets from them after we had started down the river.

Q. What boat were you on board?

A. The Delaware or Sanford—one of the New York line; the Delaware, I think.

Q. (Tickets shown witness, same as copied on page 138.) State whether those are the tickets used?

A. I do not know; tickets like those the men had; and after they got on the boat, the captain told me to muster them and take them up.

Q. They got those tickets from Mr. Hertz and yourself, you have said; where did you get the tickets you gave them?

A. From Mr. Hertz; and when the tickets were taken from them, I gave them other tickets which the clerk of the boat gave me.

Q. Who settled with the boat for those tickets?

A. I do not know.

Q. You started in the boat and were going down the river?

A. Yes, sir.

Q. What happened then?

A. When I mustered them and found there were so few, I was looking for the rest, when Mr. Jenkins came up to me and told me he would like to see me—that he had a warrant for me, and the marshal would be up alongside in a steamboat in a few minutes; I told him, very well. They searched me for papers, and brought me up to the office; I do not recollect the names of any of the company.

Q. Had a you a muster-roll?

A. I had.

Q. Where is it?

A. I rather think I tore it up when I was arrested.

Q. (Book containing the names of the men who enlisted at Hertz's office shown.) Do you know that?

A. Yes, sir.

Q. What is it?

A. I cannot say exactly whether it is a part of Strobel's company or mine—I rather think it is mine; several of the men who had enlisted to go with Strobel's company did not go with him, but went with me, and this list is part of Strobel's and part of mine, I think; I do not know whose writing it is in; Mr. Hertz gave me the list, and I suppose he wrote it; I have seen the book in Mr. Hertz's office.

Q. (Paper shown witness containing a list of names.) Do you know if that was the list of your company?

A. I think it was, to the best of my knowledge, and I think I made those marks on it. I had no list besides this.

Q. (Another paper shown witness similar to the first.) Is that a copy of this?

A. Yes, sir, I expect so.

Mr. Van Dyke here offered in evidence the list of names which the witness identified as containing the names of the members of this company, from which some of the bills had been drawn. The list is read in evidence.

Q. Do you recollect the names of James Johnson or Peter Muhn?

A. I do not.

Q. Do you recollect Mr. Bucknell coming into the office with the handbills?

A. Yes, sir.

Q. Do you know whether Mr. Hertz took them, and what he did with them. (Bill containing the British coat-of-arms shown witness, same as copied on page 114.) Is that the bill?

A. Yes, sir.

Q. What did Mr. Hertz do with them?

A. Several were stuck up around the office and on the outside, and several were sent to be distributed. I understood they were sent around to the lager-beer saloons.

Q. What became of the bills?

A. Mr. Bucknell took some away, and the rest were burned.

Q. How did that happen?

A. I went in one morning and saw some excitement; they were shoving the papers in the stove, and they told me that Mr. Bucknell had taken the rest of them away with him.

Q. Did you ever see Mr. Perkins in the office?

A. No, sir.

Q. What did Mr. Hertz tell you was to be the destination of the men you took?

A. Halifax.

Q. What were they to do there?

A. To enlist in the foreign legion, if they were found physically competent.

Q. Was there a physician at the office for the purpose of examining men that came there?

A. No, sir.

Q. Do you know what he was paid for getting these men?

A. I do not know the exact agreement.

Q. Did you ever see any telegraphing or letters written by Mr. Hertz?

A. Yes, sir.

Q. State what the telegraph contained?

A. I saw him write a telegraphic despatch to Bucknell; he told him to wait.

Q. Did you see any letter written by Hertz?

A. Yes, sir.

Q. State what it contained?

Mr. Cuyler objected.

Q. To whom was the letter addressed?
A. To Mr. Bucknell.

Mr. Bucknell was here recalled.
Q. Have you got that letter written by Mr. Hertz?
A. I never remember his sending one.
Q. Did you ever receive the telegraphic despatch he sent you?
A. Not that I can remember.

Mr. Budd's examination continued.
Q. State what was in that letter.
Mr. Cuyler objected.
Q. Where did you last see the letter?
A. On Mr. Hertz's desk.
Q. Who was at the desk at the time?
A. Mr. Hertz himself; he was writing at the time.
Q. Have you seen it since?
A. No, sir.
Q. Do you know whether it was ever put in the post office?
A. No, sir.
By Mr. Cuyler. Have you any knowledge of it, except that it was a simple sheet of paper on which he was writing?
A. Yes, sir, he informed me of the nature of it, and read part of it to me.
Q. By Mr. Van Dyke. Did he give that letter to you after it was written?
A. No, sir.
Q. You have no knowledge of what became of it?
A. No, sir.
Q. Go on and state, to the best of your knowledge and recollection, what it was that Mr. Hertz wrote on that sheet of paper.
A. Mr. Hertz was writing, and I was waiting in the outer office; he asked me how I spelt my name, and told me that he was writing about me, and stating that I was coming on next day; I then went around to where he was writing, and he again asked me how I spelt my name, and I looked over his shoulder and saw he was writing to the agent in New York that I was coming on with men, and he hoped, he wrote, that he would keep his word and send him on money at the rate of four dollars for superior brands, and two dollars for inferior brands.
Q. What did he mean by superior and inferior brands? did he give you to understand?
A. No, sir, he did not. I understood this perfectly; it meant men.
Q. Did you see him writing any telegraphic despatch?
A. I saw him write a telegraph, asking whether I should come on next day or not; I forget who took it to the office.
Q. Was there anything in it besides that?
A. He did not use my name; he asked whether he should send twenty or thirty parcels next day.
Q. Do you know whether he got an answer?
A. Yes, sir.
Q. What was the answer?

A. "Yes." It was signed "B." I think it was "Yes, all right." It was in the affirmative. He then told me to get ready to go next morning.

Q. Did he say anything to you in reference to getting directions in New York as to what to do?

A. He told me I would get directions for money or assistance from the agent at Delmonico's hotel to proceed on to Halifax.

Q. Did he mention the name of the person there?

A. He asked me whether I would know Bucknell again, and I told him yes.

Q. Did Hertz give you any money before you left?

A. No, sir.

Q. Had you any conversation with him after your arrest?

A. Oh, yes.

Q. What was it?

A. He said so much, I cannot state it.

Q. State what he said in reference to this recruiting business after you were arrested.

A. After they had arrested me the marshal went on shore and arrested Hertz, at his office, and they kept us in the Delaware a couple of hours, until they had preparations made for our reception. The deputy marshal kept the boat out, and when we came up to the office I found Mr. Hertz here. He said, "All right; I will bail you out;" and I did not think anything more about it until I was committed.

Q. Did he say anything about remaining quiet?

A. Not then; not until the latter part, when I had some difficulty in procuring bail.

Q. What did he say to you then?

A. He said keep quiet; I will have you out. He afterwards said something about the matter; it was to keep my mouth shut, it would be all right; I would be well paid for it.

Cross-examined by Mr. Cuyler.

Q. When was it you were arrested?

A. I cannot exactly remember the day, but it is very well known; I think it was in the latter part of March.

Q. Was there any previous communication between yourself and the United States officers before the arrest?

A. None whatever.

Q. This arrest was not, then, in consequence of any conversation between yourself and the authorities, directly or indirectly?

A. No, sir.

Q. Your arrest was a complete surprise to yourself?

A. Yes, sir, to me; I was totally unprepared for it.

Q. Where did the conversation take place when he told you to keep your mouth shut?

A. Once down in the prison, and once in the commissioner's office.

Q. By Mr. Remak. In what country were you born?

A. I decline answering that question, as it implicates myself. I have been advised to decline answering it.

Q. By Mr. Van Dyke. Did you ever state under oath where you were born?

A. Never.

Q. By Mr. Cuyler. Do I understand you to say distinctly that to answer the question, where you were born, would involve you in a criminal prosecution?

A. No, sir; but to answer whether I am a citizen or not would involve me in a prosecution.

Q. By Mr. Remak. Have you not been arrested and held to bail before the United States commissioner Heazlitt, on the charge of having retained and hired men for the foreign service?

A. I believe so; that is the charge on which I was arrested and held to bail for a further hearing.

Q. And were you not, on the 28th of March, 1855, a defendant before commissioner Heazlitt; that was, the day you were arrested?

A. Yes, sir.

Q. Did you not turn state's evidence on the 28th of March, against Hertz?

A. I believe that was the first day I gave evidence.

Q. Did you not say before the United States commissioner that Hertz had promised you money in case you would keep your mouth shut?

A. I did so at that time.

Q. Did you not receive that money because you were in very destitute circumstances?

A. No, sir, I did not.

Q. Had you any money in your pocket the time you were in prison?

A. I had.

Q. How much?

A. I had sufficient.

Q. You stated in your examination in chief that Strobel introduced you to Hertz as an agent of the English government; why did you not say so before the United States commissioner?

A. I said so; I do not know whether I used the exact words, but to the same sense.

Q. It is here, in the published report of the proceedings, that you said, "I was introduced to Hertz about the 15th of March, by Mr. Strobel; was introduced to Hertz as the person who would give me all the information about organizing the foreign legion in Nova Scotia." Did you not say that?

A. Yes, sir.

Q. You said to-day that you were introduced to him as the agent of the English government?

A. For that purpose.

Q. Did you or did you not state before the United States commissioner that Hertz was introduced to you as the agent for the English government? You say now that he was introduced to you as the agent of the English government?

A. He was introduced to me as agent appointed in this city by the government for whom the foreign legion was to be raised.

Q. You said that he was introduced to you there as the person who gave the information?

A. In that capacity.

Q. Did you not employ the word agent?

A. I do not recollect it.

Q. Did you not say before the United States commissioner that it was left optional to any person coming into the office whether he would go to Halifax or not, or what he would do there?

A. I said that, of course, it was left optional with the recruits to go to Halifax, but after they got there force was to be used to induce them to enlist.

Q. Did you then state to the United States commissioner that Hertz was the agent to enlist those persons for foreign service?

A. I did not say so.

Q. Did you not state to the United States commissioner that Hertz sent men to Halifax, and it was immaterial to him what they were going to do there?

A. I do recollect that Hertz sent them to Halifax for the purpose of being enlisted in the foreign legion; of course, he had nothing to do with them after they got there.

Q. Do you remember the 31st of March, when Richard Vaux was your counsel, and when Benjamin Rush made that great speech; were not you a defendant at the beginning of that period?

A. I do not know.

Mr. Van Dyke. There is no dispute about it. He was a defendant, and was discharged by the commissioner by my direction.

Mr. Remak. It is for the jury to know; I desire to know whether or not the witness, on the 31st of March, was a defendant, and had made up his mind to turn state's evidence at the time?

Mr. Van Dyke. I discharged him for the purpose of using him as a witness.

Mr. Remak. I desire the answer of the witness.

Witness. I think I made up my mind; I think so; I am not positive.

Q. Did not Mr. Hertz say to you that he had no power whatever to give commissions?

A. He said he had not power to issue commissions here.

Q. He said he had no power to give any commissions?

A. Here.

Q. Do you believe he had any power to do so?

A. I really do not know.

Q. Was Mr. Strobel present when you conversed with Mr. Hertz?

A. On some occasions. On the first occasion he was present during only the first part of the conversation.

Q. Who else was present?

A. No person.

Q. Did not you desire to see Mr. Hertz yourself?

A. After I was informed that he was the general agent of the English government, I did.

Q. Had you a desire to enlist in foreign service?

A. No, sir, I was not going to enlist; I was to receive a commission, not to enlist.

Q. And you say Hertz did not promise you any commission at all?

A. I did not say so. I said he promised me that the fact of my going on there would insure me a commission when I got there.

Q. He had not power to give one?

A. Not here.

Q. From whom did you receive tickets?

A. From Mr. Hertz.

Q. What were the tickets for?

A. To give to those men I was going to take on, to get their passage. Nothing else was given to the men.

Q. You state, I think, that able-bodied men could be attested in Halifax, if they proved physically competent?

A. Yes, sir.

Q. Did you hear Mr. Hertz say at any time that "physically competent" men would be received at Halifax?

A. No, sir, not these exact words; he has said, if they were sound, and has asked me if they were all right.

Q. Why did you not say that before the United States commissioner?

A. I suppose I was not asked; I do not know the reason I did not.

Q. Did not your examination before the United States commissioner last for some time—for two hours?

A. I do not know: it lasted for some time; I could not exactly say what time.

Q. Were not you asked at the time all you knew about it?

A. I was, but I may have forgotten some particulars; I had heard so much that I could not remember exactly all.

Q. How comes it that you remember it now, and not then?

A. There is some conversation which I related then that I cannot remember now.

Q. Who have you had conversations with in the meantime about this proceeding—that is, from the 31st of March to this 23d of September?

A. With a great many persons with whom I am acquainted; I merely talked the matter over.

Q. Were not you very partial to carrying on the war in Europe against Russia, and for that reason you wanted a commission?

A. I do not know, sir; I never remember expressing my sentiments; I wanted to go there to have a fight, and I did not care which side I went on.

Q. Have you not changed since that time in regard to the war in Europe?

A. No, sir, not in the least.

Q. You are now on the Russian side?

A. No, sir, I am not on either side.

Mr. Van Dyke here stated, that as the attorney for the defence (Mr. Remak) had seen fit, in order to impeach the testimony of Mr. Budd, to read a part of his testimony before the United States commissioner, in justice to Mr. Budd, he deemed it proper, in corroboration of the testimony of the witness, to read the whole of the testimony before the commissioner, that the jury might see that there is no discrepancy

in the two statements. (Mr. Budd's testimony before United States commissioner Heazlitt is here read by Mr. V.)

John Jacob Bosschart, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. I guess I got acquainted with him last March.

Q. Where did you first get acquainted with him?

A I do not know exactly whether I got acquainted with him at my own house or first at his office, No. 68 South Third street. I think it was at my house. I was in the habit of attending his office during the month of March.

Q. State all that took place between you and him, and between him and other persons, in relation to enlisting for the foreign legion?

A. I was first made acquainted with the business by Mr. Leob. He told me that Mr. Hertz had entered into the business of recruiting for the British foreign legion. Some time afterwards, Dr. Biell, who was bording with me at the time, told me about it, and I soon after saw an advertisement in the *German Democrat*, *Pennsylvanian*, and *Ledger*, that they wanted men for the British foreign legion; that every one who chose to go to No. 68 South Third street would learn the particulars. Dr. Biell and Aschenfeldt went down there, and I went too, to see what was going on; I saw the officers and men going there, and spoke to Mr. Hertz about this foreign legion, and about their pay and commissions. Some of them signed their names in the book, and some of them were taken down by Hertz himself.

Q. What was the character of the conversation which took place between Mr. Hertz and the men when they came up there?

A. The men came in and generally asked if that was the recruiting office, or office to enlist men for the foreign legion; the reply generally was that that was no recruiting office, and that they could not be enlisted there, but if they chose to go to Halifax they might be enlisted there; then he showed them the handbills, which stated that $30 bounty was given, and $8 a month to the men; he said that it was in his power to give them a commission.

Q. (The handbill shown witness containing British coat-of-arms, already published, page 114.) Is this the kind of handbill which he showed them?

A. Yes, sir.

Q. What did the men say they wanted to go to Halifax for?

A. They wanted to go to Halifax to serve in the foreign legion—that is, the men who came to the office.

Q. Did he engage them to go there for that purpose?

A. As I understood, he engaged them to go for that purpose.

Q. To enlist when they got there?

A. Yes, sir.

Q. And they told him that that was their intention when they got there?

A. Yes, sir, they told him that.

Q. How long were you with him in that office?

A. I was there every day from the beginning of the business until we were arrested.

Q. Do you recollect any physician who examined the men?

A. Well, I recollect that Dr. Biell examined some of them.

Q. Do you know what Mr. Hertz was to get for sending on these men?

A. No, sir.

Q. Do you know who employed Mr. Hertz to do this business?

A. I was told Mr. Howe employed him.

Q. Who told you?

A. I do not recollect who told me.

Q. Do you recollect Mr. Hertz ever saying anything about it?

A. I heard Hertz talk frequently about Howe, but cannot recollect distinctly that he said that Howe employed him.

Q. Did Hertz, in speaking of the manner in which he was employed to conduct this business, speak of Howe as being connected with his being employed?

A. Yes, sir.

Q. Did Mr. Hertz ever say anything to you about Mr. Crampton having employed him?

A. He told me he had seen Mr. Crampton on the subject.

Q. What did he say had taken place between him and Mr. Crampton?

A. He did not say what had taken place between him and Mr. Crampton—not that I recollect.

Q. You recollect the departure of Captain Strobel and his company?

A. Yes, sir.

Q. Were you at the wharf at the time?

A. Yes, sir.

Q. Was Hertz there?

A. Yes, sir.

Q. To assist in getting them off?

A. Yes, sir.

Q. Did he engage that company to go to Halifax?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of enlisting in the foreign legion, as I understood.

Q. Do you know whether he went to New York to make arrangements for sending that company from New York to Boston?

A. That company started from here on Sunday morning, at 10 o'clock, and Mr. Hertz went to New York on Sunday night, in the half-past one o'clock train, to make arrangements to see that the men got off from New York; he returned to this city on Monday night or Tuesday morning; I saw him on Tuesday morning again in the office.

Q. While he was away who had charge of the office?

A. I had charge of the office.

Q. Were you directed to conduct the business for him while he was away?

A. Yes, sir.

Q. And those men who were enlisted during the absence of Hertz, on Monday, were engaged by you at the direction of Hertz?

A. Yes, sir; I took the names on a piece of paper as directed, and

told the men that Hertz would be back on Tuesday, and find a vessel to bring them on to Halifax.

Q. Why did you not take the names in the book during his absence?

A. I guess I was directed by Hertz to take them down on the paper.

Q. (Paper shown witness.) Is that in your writing?

A. I could not say whose writing it is—some of it is written by me; two of the names are written by me, Robert Korn and Peter Sable; it is the list which was kept in the office; that list contained the names of those who engaged to go.

Q. (Another paper shown.) Is that another list of the names kept in the office?

A. Yes, sir; there is none of my writing on that.

Q. (Book containing the names of those who enlisted, which has already been partly published, shown.) Look at that book and say whether you see any of Hertz's writing in it?

A. The names on the first page, I think, are all written by the men; on the second page also; and on the third page some of them are written by Hertz.

Q. (List of officers in the back of the book shown witness.) What is that?

A. That is a list of the officers. It is in Mr. Hertz's writing. It contains the names of Strobel, Esson, Shuman, Biel, Lisepenny, Budd, Aschenfeldt, Riter, and Anglere. I know those men engaged to go as officers—some of them as non-commissioned officers, and some of them as commissioned officers.

Q. Do you know what pay Mr. Hertz got for this?

A. No, sir.

Q. (Tickets shown.) Did you see many of this kind of tickets about the office?

A. Yes, sir, there were a great many of those tickets.

Q. Did the men who went in Strobel's company get any tickets?

A. I guess so; I am not certain.

Q. (Another book shown.) Do you know that book?

A. I saw that book once there.

Q. Whose writing is that in it?

A. I guess it is the writing of a man in the employ of Mr. Hertz, Mr. Holm. I do not know exactly, but I think so.

Book read in evidence, from which it appeared that Hertz was debited with $750, and credited by cash with $300, and then charged with 758 tickets.

Q. Do you know who he got that cash from?

A. No, sir.

Q. (Some handbills were shown witness, same as on page 114, ante.) How many of those handbills did you see about there?

A. I could not tell how many. I saw a package of them; Mr. Bucknell brought them.

Q. Were any of them posted about?

A. Yes, sir

Q. By whom?

A. I cannot tell.

Q. Who directed it to be done?

A. Mr. Hertz.

Q. Do you know who paid the German Democrat for the advertisement of this call?

A. Mr. Hertz did.

Q. Where did he pay?

A. In his office.

Q. Who called for it?

A. The clerk of the Democrat, Mr. Morris.

Q. Did you see him pay?

A. I saw him pay.

Q. You were arrested at the office?

A. Yes, sir.

Q. With Mr. Hertz, on the morning that the steamer started?

A. Yes, sir.

Q. Was it before or after the men were arrested?

A. On the very same day.

Q. It might have been earlier in the day or later in the day?

A. It was after the men had started. Mr. Budd was put in command of them.

Q. Do you recollect the list of the names of those who went with Mr. Budd?

A. I think that is the last list shown me, but I am not sure of it.

Q. Do you know whether all those who went with Budd were engaged by Hertz to go with him?

A. They were engaged by Hertz to go to Halifax.

The witness was here questioned by Judge Kane as to the larger book which he had identified as containing a list of the names of persons enlisted.

Q. Was anything written in this book on the page preceding that containing the name?

A. No, sir; it is a list of officers, with their rank.

Q. It has been cut out?

A. Yes, sir, the list of officers is cut out.

Q. It was the list of officers, with their rank?

A. Yes, sir, they put their names down, and the rank they were to hold there was put down by Hertz. I mean military rank.

Q. That was all on the page cut out?

A. Yes, sir; there are two leaves cut out; one was for the commissioned officers, and one for the non-commissioned officers; I recollect there is a list of officers written in the back of the book after they were cut out, and that was just a memorandum.

Dr. Peter Joseph Reuss, sworn. Examined by Mr. Van Dyke.

Q. You are a physician?

A. Yes, sir.

Q. What country do you belong to?

A. Hesse; I have been in this country this 26th of September is four years.

Q. Will you state whether you came to Philadelphia in March or April last, and for what purpose?

A. I came to Philadelphia for the purpose of going to Halifax; I

was to go to New York, and thence to Montreal; I came here induced by a proclamation in the Philadelphia German Democrat; I went through here to New York, and from New York to Halifax.

Q. Did you stop at Hertz's here?

A. No, sir.

Q. Why not?

A. Mr. Remak objected.

Q. Had Hertz been arrested at the time you arrived here?

A. I do not know that, because I did not stop in Philadelphia; I went to New York and Montreal, and then to Boston, and from Boston to Halifax in the Africa.

Q. Is that the steamer?

A. No, sir, the barque Africa.

Q. When you got to Halifax, where did you go, and who did you see?

A. I went to the Provincial Building, and spoke with Mr. Wilkins and Mr. Bruce McDonald.

Mr. Remak. Be good enough to bring this home to Hertz.

Q. By Mr. Van Dyke. Have you at any time had any conversation with Hertz, before or after that?

A. No, sir.

Q. When you arrived in Halifax, state what you did?

A. I went to the Provincial Building and met Wilkins, the first secretary of Nova Scotia, and the same day afterward I spoke with Sir Gaspard le Marchant, the governor of Nova Scotia. I sent some days before a letter in the French language to Sir Gaspard le Marchant, and told him what I came to Halifax for—that I was induced by his proclamation. I had sent a man before to No. 68, South Third street, Philadelphia, to see what the business was, because it was in the proclamation that physicians and surgeons would be engaged with good pay, and this man came back and told me that the whole business had been stopped by the United States attorney, and that he had spoken with one man on the subject, but he did not tell me his name, and he told him that the business was all right, to go to Halifax, and I would be engaged as physician for the regiment. I wrote the letter, but did not receive any answer, because the business was stopped. In Halifax, the governor told me that I could not be engaged unless I raised men. I refused that, because I told him I did not come for that business; I came to be engaged as doctor, and not as recruiting officer. Mr. Wilkins called on me some time afterwards, and told me that if I raised men in the United States, I should be engaged, butnot if I refused; and then I was obliged to go, because the governor told me I could not be engaged without this; then I was employed as officer of recruiting, and went with Captain Strobel to the States, and was sent by him to Detroit, in Michigan.

Q. Did you hear any conversation at any time between certain gentlemen when Mr. Crampton was present?

A. Yes, sir, in Halifax, on the 15th of May, we met Mr. Crampton.

Q. Who told you to meet him?

A. Strobel called on me on the 14th of May, and told me to come

to the Provincial Building, Halifax, and meet Mr. Crampton and Sir Gaspard le Marchant; and I went, and found there Lieutenant Preston and Strobel, and some other officers.

Q. What took place in that conversation?

A. That conversation was, that we should go to the United States and raise troops.

Q. Who told you to do that?

A. Mr. Crampton and Sir Gaspard le Marchant, with Mr. Strobel.

Q. They said that to Strobel?

A. Yes, sir, and that he would go to Canada and the States and arrange this, so that we could raise troops without danger.

Q. What plan did they give you to raise these troops without danger?

A. That is what they spoke to Captain Strobel. I did not hear every word, but heard them tell him that we should go to the States and arrange the business, so that we could not be caught by the United States officers.

Q. They told Captain Strobel that he should go to the States and arrange business so as not to be caught by the United States officers?

A. Yes, sir.

Q. Who told Strobel that?

A. Mr. Crampton; he made the arrangements with Strobel, and spoke that to Sir Gaspard le Marchant.

Q. What plan did Mr. Crampton say you were to adopt in the States to prevent being caught by the officers?

A. That we should do it very still; not to work too openly; and that we should engage runners and any other men who would bring men to the depots, and from these depots we were to send them to Canada West to the barracks.

Q. What kind of runners did he speak of your engaging?

A. Boarding-house runners, emigration runners, commission-house runners, and every kind of runners, I believe.

Q. Did he say anything in reference to what you were to say to these men?

A. That every man was to receive $30, and $5 was to be taken for payment of expenses; that is what I learned from Strobel afterwards—that is, what was promised the men.

Q. Was anything said about that in conversation with Mr. Crampton?

A. No, sir, not to me—it was spoken to Mr. Strobel.

Q. He told Strobel they were to have $30?

A. Yes, sir, and $8 a month pay—cash. The bounty was given for enlisting. Each runner should receive $5 a head for enlistments.

Q. That was the pay of the runner?

A. Yes, sir, if the man was capable of being enlisted—not if the man was refused.

Q. Were they to get any pay for men refused?

A. No, sir.

Q. Then it was only for the men who arrived at the barracks and got enlisted that they were paid $4 a head?

A. Yes, sir.

Q. Did you receive any money at that time for this purpose?

A. On the 14th of May I received from Captain Strobel $220.

Q. Where did he get it from?

A. Out of the Provincial Building. Mr. Bruce McDonald gave him the money in my presence. He is the clerk of Mr. Wilkins, or second secretary, I do not know which it is.

Q. What were you to do with that $220?

A. To run to the United States for these men; that was the pay for half a month for myself and one sergeant.

Q. Did you see Mr. Crampton after that?

A. We left the next day, the 19th of May, and we came to Windsor, in Nova Scotia, and when we got there we took the steamer to St. John's.

Q. Where did you next meet Mr. Crampton?

A. I saw him in Windsor, and saw him on the ship to St. John's, and next day at Portland. At Windsor we took the Creole for St. John's, and I saw Mr. Crampton in the presence of Lieutenant Preston and another English officer—I do not know his name He came on board to us there at St. John's. He talked very often to Captain Strobel, and I went in the same ship with him to Portland.

Q. Did you see him afterwards in Portland?

A. No, sir; I know he left the steamer at Portland.

Q. Where for?

A. To go to Montreal.

Q. Who went with him?

A. I believe Captain Strobel; I took the cars for Boston, and from Boston to Niagara Falls.

Q. For this purpose?

A. Yes, sir, at Niagara Falls I expected Strobel with orders how we should go on.

Q. You did not see Crampton afterwards?

A. No, sir.

Q. Did you see any written instructions at Halifax?

A. I saw the proclamation. Mr. Wilkins showed me the proclamation for enlisting.

Q. (Proclamation with British arms on it shown the witness, same as on page 114, *ante.*) Is that the one?

A. Yes, sir, I saw that; Mr. Wilkins gave me one of them; he gave it to me in the Provincial Building to read it; he was secretary of Nova Scotia.

Q. What did he say it was for?

A. It was for the foreign legion.

Q. Did he say that this was the placard under which they were acting?

A. He told me if I should be engaged I should go on to the States and raise troops, but that without this I could not be engaged—saying what Sir Gaspard said to me. I did not see Mr. Howe; he was not in Halifax at that time; I heard very often from him.

Q. Have you at any time seen Mr. Hertz?

A. Not in this business.

Q. Did he ever say anything to you about this business?

A. No, sir. When I came with Strobel, I heard from Halifax that we could not be engaged because we did not do anything in getting men.

Q. What do you mean by that?

A. That we did not raise plenty of men, and squandered all the money, as they said.

William Eckert, sworn.

This witness did not speak English, and was interpreted by Mr. Oehlschlager. Examined by Mr. Van Dyke.

Q. Can you write?

A. No, sir; I can read my name; I knew Mr. Hertz; I saw him at No. 68 South Third street.

Q. What did you go there for?

A. I went to enlist; I wanted to enlist in the British army.

Q. Did you enlist?

A. I did not enlist; I went down with a good friend of mine, whom I requested to bring me down; he did not go down with me, but suggested to me another who went down with me; my friend spoke for me, and said, "Here is a man who wishes to enter the British army."

Q. Who did he say that to?

A. Mr. Bosschart and Mr. Budd. One of the gentlemen answered, "We do not busy ourselves with it; we will merely send you to Halifax, and then if you wish to serve you can serve, and if you wish to work you can work:" that the men were enlisted in Halifax. My friend asked how much bounty money in hand was received, and Mr. Budd told him he would receive as bounty $30, and $8 a month. Well, then I asked whether there was nothing paid in advance or immediately, for the few days I would have to remain here. They said they gave nothing; then I went away. They asked me what my name was; I did not write it; Mr. Bosschart wrote it.

Q. Where did he write it?

A. On a sheet of paper.

Q. Did you agree to go?

A. Yes, sir.

Q. Did you get a ticket for your passage?

A. Yes, sir.

Q. Who gave it to you?

A. Mr. Hertz.

Q. When was it he gave it to you—the day you sailed, or before?

A. On Wednesday afternoon.

Q. Did you engage to go with the intention of enlisting when you got there?

Mr. Remak objected to the question as a leading one.

Judge Kane. The question is too directly indicative of its answer.

Mr. Van Dyke. What was it your intention to do when you got to Halifax?

A. I wanted to go to the Crimea.

Q. In the "foreign legion?"

Mr. Remak objected.

Question by Mr. Van Dyke. In what capacity did you want to go to the Crimea?

A. As a soldier.

Q. When Mr. Hertz gave you the ticket to go to New York, did he understand that it was your intention to enlist when you arrived at Halifax?

Mr. Remak objected.

Q. Did Mr. Hertz, at the time he gave you a ticket to go to New York, know that it was your intention to go to Halifax?

Mr. Remak objected. The objection was overruled.

A. Mr. Hertz was not there the first day.

Q. I refer to the time he gave you the ticket; at the time Mr. Hertz gave you the ticket to go to New York, did he know it was your intention to enlist when you arrived at Halifax?

A. Mr. Hertz was not there when my friend brought me to the office.

Q. You have said that Mr. Hertz gave you a ticket to go to New York?

A. Yes, sir.

Q. At the time Mr. Hertz gave you this ticket to go to New York, did he know it was your intention to enlist?

A. I do not know whether the other gentleman told me the reason why he wished me to go to New York.

Q. Had you told Mr. Budd your intention?

Mr. Remak objected. The objection was overruled.

A. He heard it.

Q. On Monday?

A. Yes, sir.

The counsel for the defence, (Mr. Remak,) in the course of the examination of this witness, frequently interrupted, and attempted to correct the interpreter in his interpretation of the language of the witness. On the conclusion of the examination, he called Mr. Oehlschlager to the stand, for the purpose of questioning him as to his interpretation of the witness, but on after-consideration waived the examination.

Augustus Titus, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. Which is the person?

Witness (pointing to Hertz.) That is the gentleman sitting there.

Q. State what you know of this matter?

A. Well, I was here in the city without work, and I had no boarding house to go to, as my landlady had told me to leave; so I read of this place in the *Ledger*, and went down and saw Mr. Budd there, and a couple of other gentlemen: I went in and asked them if this was the place where they enlisted them, and I was told——

Q. Who did you ask that?

A. The gentleman is not here—he was a stranger to me. Mr. Hertz was not there the first time.

Q. How long was this before you sailed?

A. It was about 3 o'clock in the afternoon of day before. Then I

was told that I could not see the agent now, that he was out, and to come in two hours after that time. I came in, and I saw Mr. Budd, and he asked me my name; and I told him my name, and he wrote it down on a sheet of paper.

Judge Kane. How came he to ask your name?

A. Well, I don't know, without he wanted to put it down.

Q. Did you tell him what you wanted?

A. I asked him if this was the place where they enlisted, and he said no, it was not the place where they enlisted, but the place where they got men to take them to Halifax.

Q. For what purpose?

A. For enlisting. I gave them my name. My intention was only to go to New York. I was going to New York, and there I was going to leave them.

Q. Did you tell them that was your intention?

A. No, sir, I did not; I kept that to myself.

Q. You were going to out-wit them then, I suppose?

A. Well, I was going to try to; I did not know whether I would succeed.

Q. What did you tell them you intended to do?

A. I told them I intended to go out to Halifax for the purpose of enlisting.

Q. When did you see Hertz?

A. On the morning we sailed I saw him; I went up to the office and asked him what boat I was to go on, and he said that he would be down and make arrangements. There were Mr. Hertz, Mr. Budd, Mr. Bosschart, and another gentleman standing talking together, and I went down to the boat and waited until Mr. Hertz came down. I cannot say whether he came with Budd or not. I stopped down at the boat, and before we started Mr. Budd went around the wharf to see whether any one else was off the boat, and when he found there was none there, he came on board, and just before we commenced to start he called us all up. He did not form us into a rank. Sometimes he came to us one by one, and sometimes two or three were collected together, and he would ask our names. We told him our names, and he marked a cross, I think. I won't say it was a cross; it was a mark of his own on the paper. At that time we went down to the navy yard, when Marshal Wynkoop caught us. [Laughter.]

Q. Did you get a ticket?

A. Yes, sir, I got a ticket of Mr. Budd, at 68 South Third street. Mr. Hertz was not there at the time. I can read.

Q. (Ticket shown.) Is that the ticket?

A. That is the color of the card (green) I got. On the back was "Pine St. Wharf," and those are the letters ("N. S. R. C.") I have had them in my head from that day to this, and ever will remember them.

Judge Kane. Perhaps you can tell us what those letters mean?

A. No, sir, I cannot. They stand for something I am not able to tell.

Q. You say you can read. (Paper shown.) Is that the paper he marked your name on?

A. Well, I cannot say whether it was a whole sheet or half sheet. He had it lying on a table.

Q. Well, your name is on that sheet?

A. Yes, sir, my name is on there, No. 9.

Mr. Van Dyke. Is there any cross examination?

Mr. Cuyler. There is a frankness about this witness that quite disarms cross-examination.

Charles Weaver, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. Can you point him out here?

A. (Pointing to Hertz.) That is the gentleman.

Q. Did you see him in March, 1855?

A. Yes, sir, down in Third street.

Q. What did you go there for?

A. I went down because I heard from some of my friends that they were enlisting soldiers for the British army there. I went down—it was an hour before they started—and I asked him whether he enlisted men to go into the British army; he said no, I do not enlist, but if you want to be enlisted I will give you a ticket to New York, and from there the officer would give me a ticket to Halifax.

Q. Did you tell him you would enlist in Halifax?

A. No, sir, I did not tell him that; I told him I wanted to enlist, and he gave me a ticket; he did not give me any money; he took my name.

Q. Was it written in a book, or on paper?

A. I suppose it was written on a sheet of paper; Mr. Hertz took my name—he wrote it.

Q. Did you go on board the boat?

A. Yes, sir.

Q. (Ticket shown.) Was it one of these tickets that you had?

A. Yes, sir, I had one of that kind; I went down to Pine street wharf; Mr. Hertz was there the day the boat sailed; I went down with a friend of mine to the boat; I saw this man, Mr. Bosschart, there, and he said, this is the boat that goes to New York; Mr. Budd was on the boat—he was in command; he took my name on board the boat, and called us together the same as an officer; there were twelve or thirteen men together, and he had command of them; that is what I saw; he took the names on the list, and as he took them he called us together, and told us to go on that side or this; he mustered us into rank.

Mr. Cuyler. What do you understand by mustering into rank?

A. Well, we stood in a line, and he said, fall in.

Q. Who told you that?

A. This young gentleman, (pointing to Budd.)

Q. That is not Mr. Hertz?

A. No, sir.

Q. Who is it?

A. Mr. Budd; that is the gentleman.

Patrick Conroy, sworn. Examined by Mr. Van Dyke.

Q. You have been examined before in this case?

A. Yes, sir, before the commissioner.

Q. State to the court and jury what you know in this matter, and what you have heard from either of these defendants, Hertz or Perkins?

A. I never saw Hertz but at the United States commissioner's office; I had the conversation about this matter with Mr. Perkins.

Q. State when you had that conversation, and what it was?

A. Well, I was introduced to Mr. Perkins at the *Pennsylvanian* office. Is it necessary for me to state all of this matter?

Mr. Van Dyke. If it relates to the issue now on trial, state all.

Witness. I was introduced to Mr. Perkins at the *Pennsylvanian* office, some time last December—I suppose in that neighborhood; and a few days afterwards I had a conversation with him at Mr. McGeoy's Hotel, in Walnut street, in which he said there were things he might wish to talk to me about; I did not understand it at the time, and not knowing what he meant, I did not say anything. The next time I met him was at the *Pennsylvanian* office again; he was about leaving it in the evening, and was cursing and ready to kill all about the office, damning everybody in the office; I asked him what was the matter, and he took me by the arm, and we walked down a little; he said that he had just been writing a letter to one of the lords in England, who had charge of the government there; that he had everything right with the *Pennsylvanian* newspaper here, so far as siding with the government against Russia was concerned; and the first thing he saw that morning was an article directly against what he had written to England, and that the *Pennsylvanian* had deceived him. I passed it off carelessly, as I did not care what was going on between him and the *Pennsylvanian* or the British government. I met him again some time afterwards in the Exchange Hotel, and he called me to one side, and told me that it was necessary to raise a certain amount of men in this country for the purpose of raising a legion to go to the Crimea. I asked him how it was, and he said that such was the case. I asked him if there was any danger in enlisting men in this country for that purpose, for I had heard that there was, and he said no—that he had been down to Washington, and fixed all that. He said that Mr. Crampton sent for him, and when he went to Crampton he sent him to Marcy; and when Marcy asked him all about it, he said he humbugged him about it, and told him that he was only going to send the men to Halifax to dig a canal; that Mr. Marcy, in reply, remarked that he was a pretty cunning fellow, and then it all passed over; it was all fixed, and there was no more danger at all about it; he then said to me that if I would choose to take a part in the matter, he could guaranty me a commission in the legion for a certain number of men, and for a less number he could guaranty a non-commission; that if I would take an interest in the matter he would fix things for me, but that it would take two or three months to do so; that I knew there were a great many men over the country who were suffering from bad times, and who could be enlisted, and that he would make it to my interest to do so. I told him I would

think about it. The next time I saw him he was going directly from his office in Third street; from the steps of his office he went down to Campbell's cellar in Third street. He was there a minute or more, and then he came up and came over to me opposite the Exchange Hotel; he took me by the arm and pulled me to one side and asked me if I had done anything in that matter yet; I said no, I did not intend to do anything in the matter myself, but there were friends that might; he then said to me that he could not guaranty a commission in the regular army, but he could in the foreign legion, and if I had friends who would take such positions he would guaranty them the same; and if I saw any who wanted to enlist, to send them over to the office, 68 South Third street; I said I would do so, and he then remarked, I am now in a hurry; I am going down to the British consul's; I have news from Washington, and I will see you when I come back. I had no more conversation with him on the subject, except that he told me he was an agent of the British government, and had three or four hundred men to look after in this country, and pay them. He told me that, on the occasion when he had to see me in a hurry; he repeatedly told me that he was an agent of the British government, and solicited my assistance in all these ways for the purpose of raising men for the foreign legion.

Q. Did he tell you where the enlisting was done?

A. He did; he pointed over to the office, No. 68 South Third street.

Q. Where was he at the time?

A. Standing on the steps of Durar's Exchange Hotel.

Q. How long before the arrest of Hertz?

A. Some two or three weeks.

Q. Are you in the volunteer corps?

A. Yes, sir; I hold the commission of colonel.

Q. Did he ask you anything about the commission you had?

A. Yes, sir; he asked me what commission I held, and I told him colonel of the second regiment of Pennsylvania volunteers; and he said he could guaranty me a captaincy if I would go; and he knew from my position here that I could be of use to them, and he would make it of use to me. I have now stated pretty near the whole substance of the conversations. We had a great many other conversations, but there was nothing stronger in them.

Q. Did he tell you at any time, or do you know, that he actually engaged any person to go to Halifax for the purpose of enlisting; and, if so, what person?

A. I do not, sir; I know he tried to engage me.

Q. Did he not engage you?

A. No, sir; I refused him, and he tried to get me to solicit others to do so.

Question by Mr. Gillou. He said that you could be useful to him in that line of business?

A. Yes, sir.

Q. You are in business in this city?

A. Yes, sir.

Edward W. Power sworn. Examined by Mr. Van Dyke.

Q. Are you a military man?

A. I belong to a military company, and hold a commission.

Q. Do you know anything about Hertz?

A. I do; I was at his office in South Third street about the 20th or 21st of March, or thereabouts; I went to 68 South Third street, and went up stairs into a back room, and there I found some five or six men sitting around the table; I spoke first to this gentleman here, I think, Mr. Leob; I asked him whether that was the place in which they enlist men for the Crimea; he said that this gentleman (pointing to Mr. Hertz) was the person. I then turned to him and asked him what were the inducements offered to those men who had served in Mexico during the war. He said that any man who could come with a company, and be capable of commanding them, would be entitled to a commission in the English army; that this legion was for the purpose of going to the Crimea. He asked me if I was connected with anything here. I told him that I was; that I then held a commission; and he asked me then what number of men there were. Well, I said, we numbered from 60 to 64, but there were not more than 30 equipped. He then seemed anxious that I should call again. I left him with the promise that I would call again; I did so, in company with Peter Somers, who was formerly first lieutenant of the Continental Guards; I went there and introduced Mr. Somers under a fictitious name; I did that for the purpose of ascertaining how they sent the men away, so as to have him ascertain that fact. We had a conversation, for the second time, with Mr. Hertz, and Somers laughed, and I thought the joke was being carried too far, and I kind of smiled, and then I saw the whole thing was settled, and we retired. On the 27th, the night before the arrest, a man by the name of Renners, I think, came to the armory while I was drilling the company.

Q. Was Mr. Hertz there?

A. No, sir.

Q. Do you know whether Perkins had anything to do with that office?

A. Yes, sir; the second time that I went there; that was on the Saturday Mr. Perkins was sitting in the front room.

Q. When you land at the top of the staircase going up, you go into the back room of that office first, do you not?

A. Yes, sir, and that makes the front room the back room; there were two folding-doors between the two rooms, and they were partly open; the room fronting on Third street was used as the back or private office, and the back room as the front office. There was a tall man there, from whose appearance and manner I supposed was an English officer, or one engaged in the English service. Perkins was sitting on a chair leaning back, and as he saw me he drew his head back.

Q. Do you know from any conversation you had with Perkins, or are you aware that Perkins has ever engaged any individual to go to Halifax to enlist?

A. Well, I would not, may it please the court, like to answer that question, because it would, to certain extent, criminate me, so far as the law of the State is concerned.

Mr. Van Dyke. I did not ask you anything regarding yourself with Perkins.

Q. Do you know whether he has engaged, hired, or retained, or made a bargain with any other individual?

A. I know that he left me one evening to go to New York for the purpose of attending to some business for Mr. Crampton.

Q. You do not exactly comprehend my question. Do you know whether he ever said to any individual, "I want you to go," or did he engage any individual to go to Halifax?

A. No, sir.

Q. Do you know what he was doing in the front office when you saw him there?

A. No, sir.

Q. What was your conversation at that time?

A. Mr. Hertz and I were speaking together about this company.

Q. Was that the only time you saw him there?

A. I saw him afterwards come out. I went there with a number of persons, who waited on the outside to hear what was to be said, as they were determined that the thing should be broken up; and as we stood on the other side, Mr. Perkins came out and went down into Campbell's cellar, and then he came out and over to the other side, and spoke to Conroy and some others with him. My introduction to Perkins was that he came with a note to me as the second of a gentleman who had challenged a friend of mine to fight a duel.

Q. He told you he was going to New York to see Crampton?

A. Yes, sir, he said he had business with him; he told me that in Brown's drug store.

Q. Did he tell you what business?

A. No, sir; he told me that he had a great deal of business to do now; that he was connected with the railroad, and had to see his friend Mr. Crampton in New York.

Hugh Casey, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. (Pointing to Hertz.) Is that the gentleman?

A. That is the gentleman.

Q. Do you know Mr. Budd?

A. Yes, sir, (pointing to Budd,) that's him.

Q. Did you go to the office, No. 68 South Third street?

A. Yes, sir, I went there, and Mr. Hertz and I had a conversation. I saw in the *Ledger* that they were enlisting for the foreign legion there, and I went down and saw Mr. Hertz, and he told me to come back and he would give me a ticket; I went there on Friday, and he gave me a ticket to sail on board the boat with, and twelve-and-a-half cents, and told me that the boat would sail on Sunday, the 25th; I went back on Saturday with three other men who enlisted with me, and he gave me a quarter of a dollar. On Saturday afternoon, I went back again, and he gave me nine cents; and on Sunday I went down to the boat, and she had sailed. I went to the office on Monday, and Mr. Hertz was not there, but Mr. Budd was there, and he told me to

come back on Wednesday, and he would give me a ticket. On Wednesday I went down.

Q. What did you do with the ticket you got on the first occasion?

A. I gave that ticket up. I guess you have it now. On Wednesday I went down there, and met Budd at the steamboat with Hertz. Mr. Hertz saw me and told me to go on board. I went on board the steamboat, and there I saw the rest of the men had tickets in their hands, and I had none; and then I went up to the office, thinking that Hertz was there, to get a ticket, and when I came back the boat had sailed.

Q. Did Hertz give you the first ticket?

A. No, sir, Mr. Budd gave me the ticket himself for Sunday; I do not recollect getting it on Saturday; the 31st of March I saw Mr. Hertz.

Q. When you got back from the office you say the boat had sailed?

A. Yes, sir; I went up to the office in Third street, and when I came back the boat had sailed; it was the "Menemon Sanford;" I then came back, and I saw Mr. Hertz on Saturday in Mr. Heazlitt's (I think that is his name) office; he was looking for bail, and I went over to him, and Hertz said to me: "Who is going your bail?" and I said, "I do not want any bail, because I came out of the boat to get a passenger ticket, and did not go;" and he then said: "Do you want a little money?" and told me to stop around by-and-bye, and he would give me some money; I went around at 4 o'clock. Mr. Remak and he went up to Seventh and Chestnut streets, and I waited in the room until he came back, when he gave me twenty-five cents, and said to me: "You will go and swear against me, and be damned to you."

Q. Did you tell him what you wanted to go to Halifax for?

A. I said times were very hard, and I would like to go to Halifax for the purpose of enlisting in the foreign legion for the Crimea; and then he said that he would give me tickets to go there, and that I would get $30 bounty, and $8 a month, but that he could give me no money until I went on to Halifax.

Cross-examined by Mr. Remak: Did you not tell some people that you were going to see Mr. Van Dyke, and get him to send you to prison for the purpose of your support?

A. I did not, sir, use that expression; I told a person that I met on the street that I was fooled by the party, and that Mr. Hertz insulted me, and I would go as state's evidence against him.

Philip Label sworn. As this witness could not speak the English language, Mr. Davis was, at the request of Mr. Remak, affirmed as his interpreter.

Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, (pointing to Hertz,) that is the gentleman sitting there.

Q. State all you know about the enlisting?

A. I read in the Democrat that some persons were required to go to Halifax; and I went to the office, No. 68 South Third street, and

made some inquiries there if that was the place for enlisting; I made the inquiries of Mr. Bosschart; I then inquired if they engaged some people there; they told me that they desired to engage some persons to go to Halifax, in order to work there; I then asked him if I could become a soldier if I went there; he made the reply that it was left optional to me to do so or not; that those who are willing to become soldiers may do so, and those who wish to work may do so too.

Q. Did you say whether you were willing to become a soldier, and that you wanted to become such?

A. No, sir, I did not intend to go there as a soldier; I made the inquiry, if after a person got there he enlisted, what he received; I was then told there was $30 bounty and $8 a month.

Q. Who told you that?

A. The same man, Mr. Bosschart.

Q. What conversation, if any, took place between you and Hertz?

A. The first day that I came there I saw this gentleman there; I then inquired what time the vessel would go; he told me that he did not know—that Mr. Hertz was not in, and he could not tell me; I went there again on the following day and saw Mr. Hertz, and he handed me a card.

Q. (Ticket shown, same as on page 114, ante.) Was it a card like that?

A. Yes, sir.

Q. Did you sign any paper?

A. No, sir, I did not; that gentleman put my name down on some paper; Mr. Bosschart did so.

Q. Did you go to the vessel?

A. Yes, sir. Mr. Hertz told me where the vessel was, and I went towards it, that is all; I went on board, and that is all.

Q. Did you go to Halifax?

A. No, sir.

Q. Why not?

A. Because we were arrested before then.

Q. Who had command of you on the boat?

A. Mr. Budd.

James Johnson, sworn. Examined by Mr. Van Dyke.

Witness. Matthew Burk is my proper name; you will see it so on Mr. Hertz's list.

Q. How came you to get the name of James Johnson?

A. I did not wish my name to be published in the papers, so that my friends would know it; I gave my proper name to the court at the time.

Q. Why did you not want your real name known?

A. I did not want my friends to know that I was made a prisoner.

Q. Did you not give that name under oath?

A. No, sir, I did not; I told the commissioner and the grand jury, and you, my proper name, and the circumstances of it.

Q. Do you know Mr. Hertz?

A. Yes, sir.

Q. When did you see him?

A. I saw him on the 27th of March.

Q. Did you see him before that?

A. No, sir.

Q. Were you on the boat?

A. Yes, sir—in the steamer Menemon Sanford, on the river Delaware.

Q. Had you seen Mr. Hertz before that?

A. I saw him the day before, at 68 South Third street. We were taken on a Wednesday.

Q. How came you to go to his office?

A. I called first on Monday. I saw the advertisement in the *Ledger* of men wanting. I did not read it myself, but another man read it for me, and I went to see. Mr. Budd was there. I told him I had called from seeing the advertisement of soldiers wanted, and I said that I wanted to enlist. Mr. Budd told me that I could not be enlisted there, but that he could tell me how I could get to Halifax, and said that I supposed that would do to get to Halifax. He then told me I must come once again. I called again that afternoon, which was Monday afternoon, and he told me that a boat had gone before, and it was a pity I had not been sooner. I called again on Tuesday, and Mr. Hertz was there. I told Hertz my business—that I had come to enlist; and the reply he made I cannot tell now, but it was "very well," or something to that effect. He told me to stay a while, and I staid a while, and some more men came. I told him my name, and he wrote it down on a sheet of paper. He also wrote some others. I told him, when he was going to write it, that another man had written it the day before, and he said, "Very well, I will take it again."

Q. (Paper shown.) Is that the paper on which your name was written?

A. That is my name on it, though I cannot say whether it is the paper on which Mr. Budd wrote my name the first day. I called on Hertz the day after. He did not tell me what bounty I would receive; I did not inquire. He gave a ticket, and I was to go down to the boat.

Q. (The "N. S. R. C." ticket shown.) Was it a ticket like that?

A. I actually believe it was one of those green tickets. I think so, but would not swear positively that it was a green ticket, though I actually do believe it was one. I recollect its having those letters ("N. S. R. C.") on it.

Q. What did he tell you to do with the ticket?

A. He told me I was to go down and go on board at Pine Street wharf. I then went away, and called back again to the office, and I asked him "was I to go on board and say nothing to no one, or was there to be anybody there to receive me?" He told me to go down between nine and ten, and go straight on board, and to tell the rest, if I saw them, to go on at the same time. I went next morning and did so, and went on board the boat, and was taken about to the navy yard, when they brought us back again.

Q. What took place when you got on board the boat?

A. I saw Mr. Budd on board the boat, and we were called together,

and an exchange of tickets took place. We were going on, and, I thought, in a fair way for Canada; and the next news that I heard was that we were all made prisoners.

Q. Did Mr. Budd call you together?

A. Yes, sir; he was there, acting as a kind of officer, or man in authority. He did not put us in military form, but called us together.

Cross-examination by Mr. Remak:

Q. How much money have you received from the United States as witness fees?

Mr. Van Dyke objected. You need not answer that question.

Mr. Remak. I only wanted the jury to know. You need not mind.

Peter Muhn sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, I have known him since the 26th of March. I first saw him in the office, No. 68 South Third street.

Q. How came you to go there?

A. There was a man told me that there was an office to send men to Halifax to work. I was out of work, and went there. That was on Monday afternoon, and I found nobody there but Mr. Budd and that young man there, Mr. Bosschart. He told me to come next day, when Mr. Hertz would be home, and then I could know all about it. I went there next day, and he said yes, he sent men to Halifax, to work.

Q. What kind of work?

A. Any work that you pleased; and if I did not like it there, I could get a free ticket back here again; and that if I wanted to go in the army, I would get $30 bounty and $8 a month. He told me to come in again about 2 o'clock, and he would tell me all about it. I went in about 2 o'clock, and he said that Budd was going off next day at 10 o'clock, and he gave me a ticket.

Q. What colored ticket was it—red, yellow, blue, or green?

A. I do not recollect; one of the green, I guess. (Ticket shown.) That is like it; Pine Street wharf was on the back of it.

Q. You went to Pine Street wharf?

A. Yes, sir, and I went on the boat.

Q. Whom did you meet there?

A. I met Mr. Budd; he was there, and he took command of us.

Q. Did you ever see Hertz down there?

A. No, sir.

Q. You were arrested that day, were you not?

A. Yes, sir.

John Jenkins, sworn. Examined by Mr. Van Dyke.

Q. You are deputy marshal?

A. Yes, sir.

Q. Will you state whether you had a warrant, in the latter end of March, for the arrest of certain parties, and whom?

A. The marshal had a warrant for the arrest of Hertz and others, and I accompanied him.

Q. State what you did then?

A. The marshal directed me to go on board the steamer Sanford, and arrest the party that were there. I arrested Mr. Budd, together with some twelve or fifteen men, whose names I do not remember. The marshal himself afterwards went to the office of Mr. Hertz, and there arrested Mr. Hertz, Mr. Bosschart, and two others—four in all, I think.

Q. Mr. Hertz was among them?

A. Yes, sir.

Q. You arrested these men?

A. Yes, sir.

Q. ("N. S. R. C." tickets shown.) Do you know these tickts?

A. Each of the men had tickets similar to those upon their person. I took them from them.

Q. (N. Y. steamer ticket shown.) Do you recollect that?

A. I do not recollect that.

Q. (Book of Dr., containing cash-account, shown.) Do you remember that book?

A. No, sir, I do not.

Q. (Book containing list of names shown.) Do you remember that book?

A. Yes, sir, I remember that book. I found it in the secretary, which Mr. Hertz called his private secretary, in the enlisting office. He gave me the key, and I opened it.

Q. (Receipt shown.) Did you find that there?

A. Yes, sir.

The receipt was read in evidence, as follows:

"PHILADELPHIA, *March* 25, 1855.

"Received of Mr. Hertz $84 for passengers to Halifax.

"A. WINSOR."

Q. Did you find this receipt of the *Ledger* for advertising one and two-thirds squares half a month, $9 50, dated March 16, 1855, at the office, No. 63 South Third street?

A. Yes, sir, it was in the secretary; I recollect it.

Q. Did you find the receipt of the *Pennsylvanian* there?

A. Yes, sir; (this receipt will be found on page 144 ante.)

Question by Mr. Remak. Is Mr. Hertz's name in that receipt?

Mr. Van Dyke. No, sir, it is not.

Q. ("N. S. R. C." ticket shown.) Did you find any number of these tickets there?

A. Yes, sir, they were similar to these.

Q. What did you do with them?

A. I gave them to you.

Q. Do you recollect whether you arrested Michael Gilroy as part of that company?

A. Yes, sir.

Q. On the boat?

A. Yes, sir.

Q. Hugh Casey?

A. Yes, sir.

Q. James Johnson?
A. I do not remember the name.
Q. Charles Weaver?
A. I do not remember the name.
Q. Peter Muhn?
A. I do not remember that.
Q. Philip Label?
A. No, sir.
Q. Augustus Titus?
A. I remember that.
Q. Bremen Kernsten?
A. I do not remember that.
Q. William Finley?
A. No, sir.
Q. You remember Titus, you say?
A. Yes, sir, I believe they all were the parties on the boat, but I do not remember the names at this time, nor did I hear the names at that time; I remember Gilroy, Titus, and Casey.
Q. (Paper shown.) Do you remember that paper?
A. Yes, sir, I got that in his office; it was on the file.
The paper was read in evidence, as follows:

"PHILADELPHIA, 26*th of* 3*d month*, 1856.

"This is to certify, that Mr. Julinas Lyncks is in sound health and fit for any service.

"BEIL, *Doctor.*"

Q. (Papers shown witness.) Do you remember those?
A. Yes, sir, these were in the secretary.
Mr. Van Dyke. The one is the paper which Mr. Budd stated contained the names of the persons he took, and the other appears to be a copy of the recruiting book.
Examined by Mr. Remak. Did Mr. Hertz. on the day of his arrest, give you the key of his office and the key of his desk of his own accord, freely?
A. I demanded them.
Q. Did he give them without any hesitation?
A. I demanded them through you, and after consultation with him you directed Hertz to give them to me.
Q. Did he give them of his own accord, or did I ask him?
A. I think that it was after you directed him to do it. I do not think I had any conversation with Mr. Hertz about the keys—it was with you.
Q. I think, in your examination before the commissioner, you said that at the time Hertz gave you the keys, and I had no objections.
Q. By Mr. Guillou. You mentioned that you arrested a number of persons on the boat, and you also said that you arrested at the office Hertz, and some others whom you did not mention. You did not arrest Mr. Perkins there?
A. No, sir, the marshal arrested Perkins. He was not at Mr. Hertz's office, or upon the boat. I do not know where he was when he was arrested.

Edward G. Webb, affirmed. Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Perkins?

A. I am.

Q. Have you ever had any conversation with him, previous to the 28th of March, in relation to recruiting for the British service?

A. Yes, sir; I cannot speak as to the date, but during the time the enlistment was going on in Third street, opposite Dock, I met Mr. Perkins in Dock street, I think at the corner of Third and Dock, and we walked down as far as Walnut and Dock streets, and there stopped; a conversation arose between us as to the enlistment going on, or said to be going on, in one of those buildings on Third street; he stated he was hiring men at $1 25 a day, and sending them to Canada or Nova Scotia, or some other place in the British provinces; I asked him for what purpose—whether they were to go in the foreign legion to serve in the Crimea; he said he employed them nominally for the purpose—I do not know whether I use his language, but I give the idea—of working upon a railroad; I remarked to him that I thought they would find their way into the barracks, and he said he had no doubt of that, or he supposed so, or something of that sort.

Q. Did he state to you at any time whether he was doing this at the suggestion or by the advice of any higher authorities than himself?

A. He did; he told me he had not been long from Washington, and that he had had an interview with Crampton, the British minister, while there, in relation to this subject, and that he had been called to Washington in consequence of some disclosures made in Philadelphia, or other places, about the matter; I understood him to say that he or Crampton waited upon Mr. Marcy, or that Crampton told him that he had seen Mr. Marcy and had entered into an explanation about the course they had pursued in Philadelphia; and that after he had explained, Mr. Marcy either clapped him upon the shoulder—Perkins or Crampton, I do not now distinctly recollect which—and said "You are a *cunning dog*, you have not violated any law of this country."

Q. Did he tell you what he was doing?

A. He said he had employed a large number of men; he mentioned the number, but it has escaped my memory; that he employed them at $1 25 a day, to go into the British provinces, nominally to work upon the railroad, but really to go into the army.

Mr. Guillou. Did he say that?

A. That is not his precise language, but that is the idea; it is impossible for me to recollect his language.

Q. Give the substance of it?

A. As near as I recollect, he said he had employed a large number of men, and had despatched, I think he said, 500 already, nominally to work upon the railroad in one of the provinces, but he expected that they would find their way to the barracks. I asked him whether he did not employ them for that purpose. Well, (he said,) he did not care a damn where they went after they got there; that his purpose was to get them there, and then they might take care of themselves.

Q. Did he say that the British authorities would take care of them after they got there?

A. I cannot say, with accuracy, whether he did or not. He talked very fast; he was in a talking mood, and said a good deal; I saw from his flushed face that he was in a talkative way.

Q. Did he at any time try to get you to write editorials in your paper on this British question?

A. He did. He was in the habit of coming into the Pennsylvanian office nightly and daily, long before I knew who he was. After he had been coming there several weeks, he ventured into the editorial department, and conversed with the telegraphic reporter, Mr. Johnson; he entered into conversation nightly with me upon the subject of the war in the Crimea, and contended that the democratic party ought to take ground in favor of the allies; that, in fact, the United States, as a general thing, should do so, because she was the daughter of Great Britain; our people spoke the same language, and were educated in the same literature, and so on; he frequently grew warm upon the subject, and I listened to him; and repeatedly, while he was talking upon that subject, I was writing an article against the allies, and combatting his argument as he was progressing.

Q. Which is Mr. Perkins?

A. I know him very well—I have seen him almost every day; but I do not see him now in the room.

Mr. Guillou. There is no difficulty about that.

Witness. He always said that he was an agent of the British government, and that he was in correspondence with Lord Palmerston, and I think Lord Clarendon. He gave me to understand that he was a tory, and that the tory party in England was the only party that knew anything, [laughter;] that they were always able to carry on the government properly; and that the whig party was composed of dunces, [laughter,] who always got into difficulties, and were the bitter enemies of this country. He said that he was a correspondent to several newspapers, and mentioned particularly the Times; and stated that he had, with every mail, sent a file of the Pennsylvanian to Europe, to the Times. He also spoke of Lord Brougham, and said that he was in correspondence with him.

Q. Did he say the correspondence was on this subject?

A. No, sir, I do not think he did.

Q. Did he mention the subject?

A. He was talking about this subject at the time he said this. He complained about the tone of the articles in the Pennsylvanian, and showed a good deal of feeling. He said that he had written to his employers in Europe, and had assured them that the democratic press in this country was all right, which I believe did not happen to be the case, [laughter:] and that they would think it very strange that he should give them such information when they found the tenor of the articles against the allies so ultra, and so strongly in favor of Russia.

Judge Kane. Did he classify Brougham among the whigs or the tories?

Witness. I do not remember whether he classified him or not; he said he corresponded with him.

Mr. Guillou. May it please your honor, he was like the man in the play; "he received letters from Constantinople." [Laughter.]

Q. Did he speak of this as confidential?

Witness. Yes, sir, he did, and remarked on several occasions that what he told me was contained in some letters which he had just received, but could not show the letters to me. [Laughter.]

Judge Kane. Was there any relation between you and him which would have suggested the propriety of his telling you this?

A. No, sir; he is excessively talkative, but is a man of large information, obtained by travel, and is a man of education. He spoke of his being lieutenant in the British army in India, and was promoted to a captaincy by the brevet; that he had been there, and was in Hindoostan, and in that terrible fight in the mountains of Affghanistan where the British army was literally destroyed. He also spoke of his wounds, but never showed them. [Laughter.] He also spoke of his having been directed to superintend the embarkation of troops to some part of Africa or Hindoostan.

Question by Mr. Van Dyke. You are the editor of the Pennsylvanian?

A. I am.

Q. And that is what induced this conversation with you?

A. Yes, sir.

Q. You were at the time editor?

A. Yes, sir.

Judge Kane. And your press was at the time unfriendly to his projects?

A. It has been during the year and a half that I have been editor, and was so, I think, before. I did not like the threatening remarks towards the United States of some of the gentlemen high in power in England and France, and I thought we had better take care of ourselves, and put our house in order; and, therefore, I wanted the allies soundly drubbed.

Question by Mr. Van Dyke. I believe you have stated, in substance, everything?

A. As far as I recollect.

Q. Did he at any time say he engaged or retained any person to go to Halifax with the intention of being enlisted after he got there?

A. Well, he spoke in general terms, and left the impression upon my mind that he had employed those men for that purpose, and had some understanding with them that, after they got there, they were to go into the barracks. He may have mentioned them by name, but I have no recollection of it; he left the impression upon my mind that they were employed for that purpose.

Q. Have you stated fully the conversation which he repeated to you as having had with Crampton upon that subject?

A. I cannot recollect it; he talked a good deal upon that subject, and endeavored to impress me with the idea that he was a very great man, and knew the secrets of the British cabinet.

Q. You were never at this recruiting office, No. 68 S. Third street?

A. I passed by it daily, and saw something was going on; but did not know what. I saw several persons going in and out, and saw him repeatedly come out, which led me to suspect that he was a party in the matter.

Cross-examined by Mr. Gillou:

Q. I do not think you understand a question of the judge. He asked you whether the opinion expressed in the Pennsylvanian was adverse to the project of the defendant, and, as I understand you, you answered that it was adverse to the war in Europe?

A. It has been against this project of enlisting, and it has been very severe. It was the first that denounced it and exposed it.

Q. State whether Perkins is not a man who talks a great deal?

A. Yes, sir, he talks incessantly. He is a man of large information, obtained by travel, and is a man of education, but not much judgment.

Q. His temper rises pretty high sometimes?

A. Very.

Q. Mr. Conroy mentions an instance when he left your office—cursing all in the office?

A. He was frequently excited about the subject, and I would then draw him out to the length of his tether.

Q. And you were writing articles, firing away at the allies, and loading your guns with the ammunition he furnished you?

Mr. Van Dyke. May it please the court—having, as I think, proved a clear *prima facie* case against one of the defendants, (Hertz,) and submitted all the testimony I have to offer against the other, (Perkins)—I deem it unnecessary to extend the examination of the witnesses relative to Mr. Hertz; I therefore close for the present the case of the government.

[The court then took a recess for half an hour.]

The district attorney having closed his case, the counsel for the defence said they had no testimony to offer.

Mr. Guillou, for Mr. Perkins, asked the court to instruct the jury to return a verdict of not guilty as to Emanuel C. Perkins, there being no evidence to hold him.

Mr. Van Dyke. Is it the intention to make a witness of the defendant?

Mr. Guillou. No.

Mr. Van Dyke. This application is entirely within the discretion of the court, and I presume might be granted, if the ends of substantial justice were to be served by so doing; but, as Mr. Perkins is not to be put upon the stand, nothing is gained to either of the defendants by separate verdicts. I am free to admit that, under the former ruling of the court, I have not made out such a clear case against the defendant Perkins as I should have liked, but I prefer the going jointly to the jury as they now stand. The result, no doubt, will be the same to Mr. Guillou's client.

Mr. Guillou. Under the remarks of the district attorney, I withdraw my application.

Mr. Van Dyke, in summing up for the United States, said: He did not deem it necessary further to examine the witnesses who could be produced; that he was satisfied the testimony which had already been submitted was conclusive in favor of the government on all the questions which had been submitted to the jury. He had but very few suggestions to make at the present time, and such he should address

to the jury more through the medium of the court than directly to themselves, because it was his belief that under the charge which the court would give of the law bearing upon the case the jury would have no difficulty in finding the defendant Hertz guilty, in the manner and form as charged in each and every of the bills of indictment laid before them.

The act of Congress, may it please the court, provides, (I recite it from memory, and the court will correct me if I am wrong:) First. That if any person shall, within the territory or jurisdiction of the United States, enter himself in the service of any foreign prince, &c. This is one distinct and separate misdemeanor created by the act.

Second. If any person shall hire or retain any other person to enlist or enter himself in the service of any foreign prince, &c. This is another, and the second distinct misdemeanor created by this act.

Third. If any person shall hire or retain any other person to go beyond the limits or jurisdiction of the United States with the intent to enlist or enter himself in the service of any foreign prince, state, colony, district, or people, as a soldier—not as a soldier on board any vessel or letter of marque, as has been contended, but as a soldier according to the general common acceptance of the term—or as a mariner on board any vessel or letter of marque, &c.

Now, these three are distinct and separate offences. The first is that of a person enlisting or entering into the service of any foreign prince, state, colony, district, &c. In relation to this he said the defendant is not in any manner charged in the indictment, and, therefore, it is unnecessary to embarrass the court and jury in taking into consideration any facts which relate to an intent on the part of the defendant to enter and enlist himself. Neither has the defendant, nor any other person, been charged with having absolutely enlisted within the territory or jurisdiction of the United States; nor is the defendant, or any one else, charged with having gone beyond the limits or jurisdiction of the United States with the intent to enlist.

What, then, is the charge? What the only issue upon which I ask this court to charge the jury, that the government has made a clear case? It is: first, that the defendant hired and retained some persons to enlist within the limits or jurisdiction of the United States. This crime is charged in two ways in the first two counts in the indictment; and, secondly, that the defendant has within the jurisdiction of the United States hired and retained certain persons to go beyond the limits and jurisdiction of the United States with the intent to enlist when they arrived beyond such limits and jurisdiction. This crime is charged in various forms in the four remaining counts of the indictment.

It is no offence under the statute, in Muhn or Budd, or any one else, to be hired; so that those recruits who have voluntarily come upon the stand and confessed their participation in this lawless transaction have confessed no crime. If A hires B to go beyond the limits of the United States with the intent mentioned in the act, B having agreed with A within the limits of the United States to depart with the intent to enlist, the crime or offence is not committed by B, because he merely engaged with A to go, but the offence is committed

alone by A, who hired him: for, so far as the going beyond the limits of the United States with the intent to enlist is mentioned in the act, the offence consists in hiring or engaging the person to go, and not in being hired or engaged to go. And the court is asked so to charge the jury. Then, as to the intent, what is meant thereby? and who must have such intent? On this point the court is asked to charge the jury, that the intent mentioned in the act is the motive in the mind of the person hired, and has no reference to the design of the person hiring, except that the person hiring believed, or had reason to suppose, the person hired really intended to enlist when he should arrive beyond the limits of the United States, and that he hired him for such purpose. That if the jury, from all the testimony, are satisfied that Hertz, at the time he engaged Muhn, Budd, Weaver, or any other person mentioned in any of these bills of indictment, to go beyond the limits of the United States, and furnished him the facilities to depart, had the intention to enlist in the British military service, then that point of the act which speaks of the intent is sufficiently established.

Believing that the learned court will give the jury in charge the law as he has stated it, Mr. V. called the attention of the jury to the principal features of the evidence in the case. He contended that he had established every point made in his opening remarks.

First. He had shown by incontrovertible testimony, that the necessities of the British government, resulting from the disastrous condition of their army in the Crimea, and the unpopularity of the cause of the allies at home, compelled them to hazard the enlistment of soldiers within the limits of foreign neutral nations.

Second. That in the accomplishment of this design, the English authorities at home, and their representatives on this continent, had, in gross violation of the laws of the United States, concocted and partially matured a plan for procuring, within our territorial limits, sufficient men to supply the forlorn hopes of an unpopular war, and regain the lost prestige of a waning administration.

In support of these points, Mr. V. adverted to, and commented upon, the testimony of Captain Max F. O. Strobel, Colonel Burgthal, Colonel Rumberg, Dr. Reuss, Mr. Bucknell, and Mr. Budd. The truth of their representations had not been questioned, and the jury are bound, under their oaths, to regard their evidence as conclusive.

Third. That Henry Hertz, the defendant, was an agent of the English government in the accomplishment of this general plan and design. That he had been employed for that purpose by Mr. Crampton, her Britannic Majesty's envoy extraordinary—the highest British functionary known in this country—as also by Sir Joseph Howe, the general agent, specially sent to America for this purpose; and by Sir Gaspard le Marchant, the governor of a neighboring British province.

Fourth. That in pursuance of such employment, this plan was regularly carried out by the defendant. That he did, in the city of Philadelphia, engage at least two hundred men to go beyond the limits of the United States, with the intent to become a part and parcel of the British foreign legion. That in order the more effectually to accomplish this design, he opened, under the auspices of his English

employers, a recruiting office, and advertized in the public papers, and posted through the streets placards bearing the Queen's arms, inviting men to his office. That the persons calling, in answer to such proclamations, were sent by the defendant to Halifax, who, when there, were attested, and mustered into the military service of the British government.

Fifth. That Mr. Hertz, at the time he was thus engaged in hiring and sending men beyond the limits of the United States, well knew that it was the intention of the persons thus hired and sent, to enlist in the service of her Majesty the Queen of Great Britain.

Mr. V. argued that the affirmative of each of these propositions was fully sustained by the testimony produced by the government, and called the attention of the jury to that portion of the evidence which severally related to them. He said the character of the witnesses was unimpeached, and that their testimony had been abundantly corroborated by the written evidence which he had been enabled to produce; that there could be no difficulty in finding a verdict of guilty as to the defendant Hertz. That if the jury believed both defendants guilty, they should so find. If, on the contrary, they did not think a case had been made out against Perkins, they should acquit him and find a verdict of guilty against Hertz; they could separate their verdict.

As to Mr. Perkins, Mr. V. said that he did not intend to press for a conviction where the evidence does not in the clearest manner justify him in so doing; that however much he might himself be convinced of a defendant's guilt, it was his duty to *prove* him so, and that beyond reasonable doubt. From the intimation of the learned court when this case was before it on writ of *habeas corpus*, he presumed his honor would require the government, under the present form of indictment for a statutory offence, to prove an actual hiring or retaining of some one of the individuals mentioned in the bills. Should such be held to be the law under this statute, he was compelled in candor to say to the jury that he had himself, under the testimony, a doubt as to Perkins having been proved guilty. He regretted such was the case; but having brought all the evidence he could to bear against him, he left him in the hands of the jury, without any expression of his private opinion as to that defendant's guilt.

Mr. V. closed his remarks by a severe commentary upon the baseness and perfidy of the persons engaged as the chief actors in this flagrant attempt to violate and evade the laws and treaty obligations of the United States, and expressed the hope that the result of this case would vindicate the action of the government in their determination to maintain our national integrity with every nation of the globe, whether it is or is not in accordance with sinister purposes of Great Britain. By forcing this indictment thus against this defendant, the President of the United States has struck as near the throne of her Majesty as he is enabled to do in the shape of a criminal prosecution. The extended privileges and peculiar protection given to a foreign minister prevents, so far as he is concerned, the application of the criminal code of the country, although such foreign minister may be proved guilty of acts which, if committed by a private individual, would make him a felon.

Were it not so, I think I am justified in saying I would this day, by the direction of the President, be trying Mr. Crampton, Sir Joseph Howe, and Sir Gaspard le Marchant, instead of their humble instrument, whose conviction is now asked at your hands. The jury, however, will leave these gentlemen to the only power legally authorized to take care of our public safety, by demanding reparation from their government; and you, gentlemen, may rest assured that in due time they will be called upon by our able and faithful officers at Washington to make proper atonement for the gross insult which they have offered to our laws and our people.

If, on the contrary, after I have in this trial, instituted by the direction and with the cordial approbation of the national administration, proved the defendant so clearly guilty as the instrument and agent of Mr. Crampton and his confederates, you should, on account of any sympathy which may be thrown into the jury-box, acquit him, your verdict will be the strongest argument which will hereafter be used to protect her Majesty's agents in their impudent intermeddling with the affairs of this continent. Confident, however, that you are men devoted to the institutions and political policy of your own country, and, as such, are ever ready fearlessly to defend them, I leave in your hands the honor of the government, and the rights of all those who seek shelter beneath its broad protecting ægis. Weaken not that power of protection by your verdict—stain not that honor by one moment's hesitation in your approval of the determination on the part of the government to preserve every feature of our constitutional vigor, as well from the jealous designs of foreign powers, as from the fanatical treason of domestic foes.

Mr. Van Dyke having concluded, he was followed by Mr. Stephen S. Remak, who made a powerful appeal to the jury in behalf of the defendant Hertz. He spoke for two hours and a half, giving a full history of the case, reviewing the testimony which had been submitted, and dwelling with great power and eloquence upon the law bearing on the subject. It would have afforded us great pleasure to be able to present his speech in full, as taken by our reporter, but want of space forbids.

Mr. Cuyler. May it please the court, gentlemen of the jury: You are weary, gentlemen, and long to be released. I shall detain you but a few minutes by the remarks it is my duty to make to you in this case.

The facts of the case have been elaborately analysed and discussed by my colleague, and I deem it unnecessary to pursue the path in which he has preceded me—in reviewing and digesting the testimony you have listened to so patiently in this case. The duty which has fallen to my share, may it please your honor, is chiefly that of inviting your attention to the view entertained by the defence of the true construction of the act of Congress under which this indictment is framed—trusting, if you shall agree with us in that construction, that the jury will not find in the evidence in this case that a violation of the wholesome provisions of this act of Congress has taken place.

You cannot have failed to notice, gentlemen of the jury, in the progress of this case, that the names of those high in authority and offi-

cial rank have appeared, and often appeared, to be mingled in the transactions from which these indictments have sprung. Mr. Barclay, the consul at New York, Mr. Mathew, the consul at Philadelphia, Mr. Crampton, the British minister at Washington, have all of them appeared as prominent and earnest actors in the scenes which have been detailed in the evidence before you. Among the humblest of all who have been named, is this poor and unfortunate man—a stranger in a strange land, forlorn, friendless, and deserted, for whose conviction the zeal and learning of the district attorney, and the power of the government, have been so earnestly and sternly pressed upon you. And here, pausing for an instant, let me pay my tribute of respect to the learned district attorney, for the candor and liberality with which he has conducted the case, and for the more than usual fullness, perfection, and ability with which he has prepared and managed this prosecution. The power of the government, so ably exerted and directed by him in this prosecution, is in strange contrast with the preparation this poor and friendless man has been able to make for his defence.

I cannot suppose, gentlemen of the jury—I will not suppose—you will not, I trust, suppose for an instant, that these high functionaries of a foreign but friendly state, dwelling within our borders, have consciously either evaded or violated the provisions of any of the laws of the land. You will not believe that these gentlemen of standing, character, and intelligence have deliberately planned an infraction of the laws of the country, and then left this humble instrument of their designs unfriended to bear the severe penalty of a law broken under their advice and in the execution of their requests.

You will the rather, gentlemen, believe with me, that, conscious of their own integrity, and with the law in full view before them, and with experience and capacity to construe the law aright, they so ordered their own course, and so directed their subordinate agencies, that no violation of the law should anywhere take place. This, gentlemen, I trust, you are now about to find. In a word, I shall submit to you that no offence is proven within the construction of the act which I shall ask the learned judge to give you.

May it please your honor, the offence with which this man is charged is unknown to the common law. The right of any man to expatriate himself cannot under our law be questioned, except so far as the statute may have forbidden it to be done under certain particular circumstances, or with a certain intent which the statute forbids and punishes. Such a statute is the subject of strict construction. If the facts are not within its fair spirit and construction, the offence is not made out, and it is your duty to acquit. Now what is the offence created by the statute, in derogation of that which otherwise would not be unlawful or in any way punishable? The second section of the act of Congress of April 20, 1818, under which the indictment is pressed, provides that if any person shall, within the territory or jurisdiction of the United States, enlist, or enter himself, or *hire or retain* another person to enlist, or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district,

or people, as a soldier, &c., "every person so offending shall be deemed guilty of a high misdemeanor," &c.

The offence does not consist of course in a person hiring or enlisting, and there is nothing of that kind in the case; but it consists either in hiring or retaining other persons to enlist, or hiring or retaining other persons to go beyond the limits of the United States with intent to enlist. The offence, then, is "the hiring or retaining." Now that means something more than mere persuasion. It does not mean that the mere exercise of an influence which operates upon the reason of a person and induces him to go, creates the offence. It must be a "hiring or retaining," or, in other words, it must be the creation of a legal obligation, or of that which, irrespective of the provisions of this act of Congress, would amount to a contract or legal obligation, and be capable of enforcement as other legal contracts are.

I submit, then, to your honor, this, as the true construction of this act, and I ask you so to instruct the jury.

Now, gentlemen, upon the whole testimony in the case; has the evidence raised in your minds a conviction, free from all doubt, that there existed between Mr. Hertz and any of the several parties named in these indictments, a valid, legal, binding contract "of hiring or retaining" them to enlist, or to go beyond the limits of the United States with intent to enlist? If it has not, it is your duty to acquit. Can you upon your oaths, on this testimony, say to me there has been such a conviction established in your minds?

Turn with me for a moment to the testimony. I shall not weary you with its details; but tell me, witness after witness was examined before you, and did they not almost with a unanimous voice tell you that they were not enlisted in the service of any foreign prince or state, nor placed under any obligation to enlist, but simply were to be transported to Halifax, and they were in the exercise of a perfectly free and independent judgment, either to enlist in the service of the Queen, or to decline to do so, as they might in their mere discretion see fit to do? It is true there have been several witnesses upon the stand whose testimony might receive a different construction; but remember, gentlemen, the disadvantages under which these witnesses labored. They were foreigners—Germans—who spoke our language imperfectly, incapable of expressing as you or I would do those nicer shades of meaning which are needful to convey a true and precise impression of the facts. You will not say to me that such testimony, and so little of it, will bear down in your minds the full strong current of other testimony; some of it written, and precisely embodying the exact plan and intention; much of it oral, but clear and exact, and perfectly consistent with that which was written, and all showing, beyond question, that no man was "hired or retained" in this country for any purpose whatever, but that they were simply persuaded to go to Halifax, and, when there, were in the perfectly free exercise of their judgments, in their mere discretion, to determine either to enlist or to refuse to enlist, as they might then choose.

I can feel no doubt, gentlemen of the jury, that you will find this to be the weight of the testimony. If you do, I ask you to acquit. If you do, you will find that there did not exist between Hertz and

these parties a contract such as, irrespective of this act of Congress, would be valid, legal, and capable of being enforced; and so finding, as there was no "hiring or retaining" within the meaning of the act, you will acquit.

Gentlemen of the jury: I represent a very humble man—a poor, desolate stranger. If the law has been violated—which, in view of the construction I have just given you, it plainly has not—there are others upon whom, with more justice, its penalties should be visited. Let us shield this man, whose highest offence, if offence he has committed, is ignorance of the law; and let those wiser men of higher rank bear the penalty. This question should be settled elsewhere, not here. If our laws have been outraged, the government of Great Britain has done it. Let that matter be settled at Washington, and not in an account between the government and this obscure and humble man. But, gentlemen, I will not detain you any longer. You will not, I am sure, find in the facts of the case that the law has been broken anywhere, or by any man. You will not find that mere persuasion is the creation of a legal contract, or that a man who is left free to the unpledged exercise of his own mere discretion has been "hired or retained," within the meaning of this act. And so thinking and so finding, you will rejoice to restore this unfortunate man to his friends and his home, and to the wife and the children who wait for and long to welcome him there.

Mr. Gillou said: May it please the court, gentlemen of the jury: If you will bear with me at this late hour of the day for five minutes, I will close my duties within that time. It is the boast of us all that we live in a land of laws. It is our safety that the law is administered by two tribunals—the one explaining the law, and the other applying it to the facts in evidence. The indictments upon which you are to pass—some twelve or thirteen in all—charge the defendant Perkins, together with Hertz, with having enlisted specified individuals, A, B, C. The crime with which he stands indicted, is the enlistment of persons to serve in a foreign country. I have turned my attention carefully to the testimony in this case, because, when counsel makes an assertion to a jury on a point of fact, it is his duty to ascertain that he is right in his statement; and I say, after examining this testimony, that there is not any portion of it which shows any connexion of Perkins with Gilroy, Budd, Casey, or any other person whose name is in any one of these bills as a party sent away or enlisted. If I am right in this statement of the testimony, there is an end of this indictment; for the law requires that the party charged be shown by the evidence to have acted in relation to the particular crime which is averred in the particular bill, and in relation to the particular party, the subject of the crime. You will, therefore, when you take up a bill, remember this, and ask yourselves whether Perkins had anything to do with the hiring or enlisting of the man whose name is mentioned in it. If there is no evidence to show that he had, you will return a verdict of not guilty as to Perkins; and as you take up each bill, so examine and declare upon it. As to the other defendant, I have not a word to say; my friends

on the other side have fully gone into the case, and given you the law and the facts bearing upon it.

There is this principle which rests at the basis of law, that the crime must be proved to have been perpetrated. Therefore, so far as the defendant Perkins is concerned, consider him not connected in this case with the other defendant, but on trial alone; and then ask yourselves the question, Did Mr. Perkins do anything at all to enlist or get off Gilroy, or any other person? You will find that the burden of the testimony bears directly against such a conclusion, and shows that he had nothing to do with it. I think, therefore, that you will be able to arrive at your verdict readily, and without difficulty. It would be a task of the most painful character if his honor, after hearing the evidence in this case, were to proceed to pass sentence on this defendant, however indiscreet in speech he may have been, as you can but entertain a great doubt of his guilt. The law says, that if you have a reasonable doubt of the guilt of the person charged—such a doubt as would arise in any reasonable mind—such doubt is the safeguard of the defendant, and entitles him to an acquittal. I hope you will have no difficulty in this case, but that at least you entertain a doubt which favors the defendant, and will relieve his honor from passing sentence. I ask you to find a verdict of not guilty as to the defendant Perkins.

Mr. Van Dyke, in reply, said he would follow, with pleasure, the example of his learned friends on the opposite side, and briefly bring this protracted trial to a close. He desired to confine himself strictly to a reply to the positions taken by the counsel for the defendants.

The act of the 20th of April is one of easy and simple construction. The learned gentleman (Mr. Remak) who first addressed the court in behalf of the defendants, is wrong in supposing that there have been no judicial decisions which shed light upon the act of Congress. In 1832, John D. Quincy was indicted, under the third section of this act, for fitting out and arming a vessel, with the intent that such vessel shall be employed in the service of a foreign prince. The case went up to the Supreme Court of the United States, and is to be found in 6 Peters's Reports. It will be observed, upon examination of that case, the law in reference to our neutrality is somewhat different from the general criminal law of the country. The argument there made by Mr. Williams for the United States was, that these acts of Congress should be construed according to the meaning and intention of Congress, and, in support of this argument, he cited that part of Judge Marshall's opinion on the penal laws of the United States, as reported in the case of the United States *vs.* Wiltberger, 5 Wheaton, 95, "that, although penal laws are to be construed strictly, they are not to be so construed as to defeat the obvious intention of the legislature." This argument was answered in an able manner by Mr. Wirt; but, Justice Thompson delivering the opinion of the court, said, 'it was sufficient to establish, by this testimony, the committal of the crime, according to the *plain meaning* of the words used in defining the offence."

The whole policy of our neutrality laws requires a liberal construc

tion of the statute, if, indeed, it is to be effective in preserving our neutrality between foreign belligerents.

It is also contended by another counsel of Mr. Hertz, (Mr. Cuyler,) that there must have been an absolute contract and consideration paid. This position is not the law, as I understand it. The retaining, whether by coaxing or otherwise, was sufficient. The engaging, which is the meaning of the word retaining, whether by means of present pay or the promise of future compensation, is sufficient.

But here there was an absolute contract. This is a question of fact for the jury; and if they so find, any difficulty on the question raised by the eloquent counsel is avoided. The conditions of the contract were verbal, and its execution was consummated by the signatures of the parties to the roll-book, each one signing that book, clearly understanding what he was to do, and what he would receive for it. That contract stands, for all legal purposes, in the same position as though it had been entirely in writing; and were it not from its very nature and general character void *ab initio*, could be enforced in any court of common law, and the bounty or pay mentioned for the services could be recovered from any private contracting parties. Debts and damages are daily recovered upon agreements much more carelessly made. The terms of the contract were, on the one side, that Peter Muhn and William Budd, and a score of others engaged, should go to Halifax for the purpose of enlisting; and, on the other hand, certain remuneration was to be paid them by the defendant's principal, for the performance of their part of the agreement.

The pay was to be received, it is true, after they arrived at Halifax; part of that pay was the privilege of being received into the Queen's service. They were, also, to receive a free ticket and passage to their destination. This contract was considered so binding, that one of the witnesses tells us that force would be used at the barracks to compel the enlistment when there, and even the poor privilege of repentance was not allowed to the indiscreet and hasty. They were, also, to receive a monthly pay. Now, if this is not an absolute hiring of a party to enlist, then nothing is, and the act of Congress is a dead letter, and should be repealed.

Mr. Cuyler. What was it a contract to do?

Mr. Van Dyke. A contract, sir, to go beyond the limits of the United States with the intent to enlist in the British service. And, if any doubt existed on the question of intent, such doubt is removed by the indisputable fact that the men actually did enlist, and are, in all probability, at this moment in the Crimea.

It is admitted that the parties who make this contract must be indicted in the district where the contract is made—in the place where the parties are engaged. In a case which has recently been tried before the United States district court for the Massachusetts district, the case of United States *vs.* Lewis Kazinski, reported in 8 Monthly Law Reporter, p. 254, the prosecution failed, substantially, because the hiring took place in New York, and the trial was had in Boston: the court ruling that the expression of intent made in New York could not be given in evidence, and confined the prosecution to ex-

pressions of intent made in the district where the crime was charged to have been committed; and the recruits on board the vessel upon which they were arrested having expressed a different intent from that expressed at the time of hiring in New York, the cause failed, among other reasons, for the want of the proof of the intent required by the act. *Exempli gratia:* to make the case more intelligible, suppose the party which left Philadelphia on the 25th of March, in the charge of Captain Strobel, had, after their arrival within the limits of the southern district of New York, expressed their intent to be to go to Halifax to work on the railroad; and Mr. Strobel, who had, in fact, assisted to engage the men in Philadelphia, had been arrested, and, under the second section of the act of 1818, indicted in the southern district, where he happened to be found in charge with the recruits, and the able prosecuting officer for that district should offer to prove the expressions used by the recruits in Philadelphia as to their intent when arriving in Halifax; the court would hold him to the proof of expressions of intent made in the southern district of New York, where the offence of hiring and engaging is charged to have been committed: and particularly so when the fact is brought to the knowledge of the court, that the evidence as to the intent expressed in the two places differ most materially and substantially. Now, this was the case of the United States *vs.* Kazinski, and for this want of sufficient proof of the *intent*, in the district where the trial took place, the defendants were acquitted.

But this case is important for other reasons. It settles two of the fundamental questions which must arise in every prosecution under the second section of this act of Congress.

First. The meaning of the term *hiring* or *retaining*, which is to be construed in its every day acceptation, and is virtually nothing more than "engaging"—the word used by the learned judge.

Secondly. That the hiring must be within the district where the crime is charged to have been committed; and I have shown that such hiring, so far as it could be consummated anywhere, was actually done here.

A single word in reply to the remark of Mr. Cuyler, as to the propriety of prosecuting this defendant, while persons of more importance are permitted to pass unpunished. I agree with my learned friend that it is rather unfair, in one sense, that Mr. Hertz, the mere humble instrument of a great nation, should suffer for the acts of his superiors. But Mr. Hertz was a free agent, and acted voluntarily in the whole affair. He sought for and obtained the position under Mr. Crampton and Mr. Howe, which enabled him to violate our law: and he has no right to complain if he suffers the penalty of his own wilful misconduct; and it is the duty of the jury, if they believe him guilty, so to find him. You will also recollect, gentlemen, that the prosecution of this defendant was the only means by which the Executive of the United States could be best informed of the impropriety of the conduct of those representatives of the British government who have been accredited as fit and honorable men, claiming peculiar privileges near our government. I have no doubt that this trial has furnished such information, and that such steps will be adopted as are sanc-

tioned by international law. But with that you have nothing to do here. Your only duty is to impartially inquire into the conduct of Mr. Hertz and Mr. Perkins, and to render a fair verdict under the evidence. With that verdict, whatever it may be, I shall have no complaint to make.

Mr. Van Dyke having concluded, Hon. John K. Kane charged the jury as follows:

I intended, gentlemen of the jury, when we separated, to avail myself of the leisure afforded me to put my charge in writing; but I have been prevented by controlling circumstances from doing so, and my remarks to you, therefore, will be less closely connected, perhaps, though I trust they will not be on that account less intelligible and clear.

The case has involved, in its progress, a train of facts of very considerable political interest—perhaps of more general interest in that aspect of it, than in its bearing on the questions which are to be decided by your verdict. There are very few among us, probably none, who have not felt aggrieved at the tone with which the press of foreign countries, and occasionally of foreign statesmen of the day, have commented upon what they have been pleased to call *over-alacrity* of the American people to engage in military controversies in which they properly had no rightful part. Our people and our government have been accused of forgetting the obligations of neutrality, and pushing ourselves forward into the conflicts of foreign nations, instead of minding our own business as neutrals, and leaving belligerents to fight out their own quarrels. For one, I confess that I felt surprised, as this case advanced, to learn that during the very time that these accusations were fulminated against the American people by the press of England there was, on the part of eminent British functionaries here, a series of arrangements in progress, carefully digested, and combining all sorts of people, under almost all sorts of influences, to evade the laws of the United States by which our country sought to enforce its neutrality; arrangements matured, upon a careful inspection of the different sections of our statutes, ingeniously to violate their spirit and principle without incurring their penalty, and thus enlist and send away soldiers from our neutral shores to fight the battles of those who were incontinently and not over-courteously admonishing us to fulfil the duties of neutrality.

I allude to these circumstances, and this train of thought, gentlemen, not because it is one that should influence your action as jurors, but because I feel it my duty to guard you against its influence. The question which you have to decide is, not whether there has been an effort on the part of any foreign functionary to evade the provisions of our acts of Congress, but whether these two defendants have or have not violated the provisions of the act of Congress, which are cited in these bills of indictment; your verdict will respond to the simple question, are these two men guilty of the crime with which they are charged?

In order that my remarks may not hereafter be embarrassed by the necessity of using the plural when the singular is more appropriate, I will say to you, at the outset, that there is no evidence against one of

these defendants. Before a jury can properly convict an individual of a crime, they must be satisfied, by clear evidence, that the crime has been committed by some one. We have no statute which affects to punish braggart garrulity; and, unless the particular offence of enlisting certain definite persons has been committed by Perkins, one of the defendants, though he may have proclaimed upon the house-tops that he has recruited armies innumerable, no jury can properly convict him of the offence he professes to have engaged in.

I pass to the consideration of the case of the defendant Hertz. He stands indicted, sometimes jointly with another, sometimes alone, with the offence of having hired and retained certain persons to go out of the United States for the purpose of enlisting and entering themselves as soldiers in the service of a foreign prince, state, or territory.

The act of Congress is in these words—I read the words material to the question, leaving out those which apply to a different state of circumstances:

"If any person shall, within the territory of the United States, hire or retain any person to go beyond the limits of the United States, with the intent to be enlisted in the service of a foreign prince, he shall be deemed guilty of a high misdemeanor."

The question which you have to pass upon is, Did Henry Hertz hire or retain any of the persons named in these bills of indictment to go beyond the limits of the United States, with the intent to be enlisted or entered in the service of a foreign state?

Did he hire or retain a person? Whatever he did was within the territory of the United States.

The hiring or retaining does not necessarily include the payment of money on the part of him who hires or retains another. He may hire or retain a person, with an agreement that he shall pay wages when the services shall have been performed. The hiring or retaining a servant is not generally by the payment of money in the first instance, but by the promise to pay money when the services shall have been performed; and so a person may be *hired* or *retained* to go beyond the limits of the United States, with a certain intent, though he is only to receive his pay after he has gone beyond the limits of the United States with that intent.

Moreover, it is not necessary that the consideration of the hiring shall be money. To give to a person a railroad ticket that cost four dollars, and board and lodge him for a week, is as good a consideration for the contract of hiring, as to pay him the money with which he could buy the railroad ticket and pay for his board himself. If there be an engagement on the one side to do the particular thing, to go beyond the limits of the United States with the intent to enlist, and on the other side an engagement, that when the act shall have been done, a consideration shall be paid to the party performing the services or doing the work, the hiring and retaining are complete.

The meaning of the law, then, is this: that if any person shall engage, hire, retain, or employ another person to go outside of the United States to do that which he could not do if he remained in the United States, viz: to take part in a foreign quarrel; if he hires another to go, knowing that it is his intent to enlist when he arrives

out; if he engages him to go because he has such an intent, then the offence is complete within the section. Every resident of the United States has the right to go to Halifax, and there to enlist in any army that he pleases; but it is not lawful for a person to engage another here to go to Halifax for that purpose. It is the hiring of the person to go beyond the United States, that person having the intention to enlist when he arrives out, and that intention known to the party hiring him, and that intention being a portion of the consideration, because of which he hires him, that defines the offence.

I believe that after making this comment upon the law, I might pass on to the facts; but it occurs to me to add, that you are not to require proof of the connexion of the defendant with each particular fact and circumstance which has been given in evidence to show the working out of the general plan.

If you believe the witnesses, the object here was to effectuate an enlistment beyond the borders of the United States, and yet escape from the provisions of this section; to do effectively, and yet not seem to do. If you are satisfied—no matter what was the avowed object of the party, no matter what the pretext, if you are satisfied that Henry Hertz was here engaged in hiring and retaining men to go off to Nova Scotia, there to enlist, that being their intention, and he believing that it was so, and therefore hiring them; then, no matter what was the costume or mask which the transaction wore, he has committed the offence charged in the bill of indictment.

As to the evidence, gentlemen, you have listened to it very carefully, and it has been commented upon abundantly. I do not know that it is my duty to detain you by a single remark on it. It is all on one side. Whether it establishes the fact is for you to judge. The enlistment necessarily includes the action of different parties; the concert between them is to be inferred from their acts. The intention of the party engaged or retained to enlist, is to be gathered from his conduct and declaration here, from his conduct after he reaches the foreign country, and from the action of third persons with whom he perfects the enlistment that he may have contracted for here. You are, therefore, while looking primarily at the conduct of Hertz, to look also at the actions of others tending to the same objects; and if you judge that they were actually in concert with him, then all their acts, done in pursuance of the common purpose and plan, are to be regarded as his. With these remarks I leave the case in your hands.

At the conclusion of the judge's charge, the jury retired, and returned in about fifteen minutes. On taking their seats, the clerk of the court, in the usual form, put the question: "Gentlemen of the jury, have you concluded upon your verdict?" To which the foreman replied, "We have."

Clerk. How say you, guilty or not guilty?

Foreman. Guilty as to Henry Hertz, in manner and form as he stands indicted on all the bills of indictment; as respects Emanuel C. Perkins, not guilty.

The jury were then discharged. Sentence deferred for the present.

And now, September 29th, 1855, Theodore Cuyler, esq., and

Stephen Remak, esq., for Mr. Hertz, move for a rule for a new trial, and, by leave of court, file the following reasons:

UNITED STATES *vs.* HENRY HERTZ. } In the district court of the United States, sur indictment for unlawful enlisting, &c.

1. That the learned judge erred in admitting in evidence proof of the acts and declarations of other persons done and said in the absence of defendant.

2. The learned judge erred in his construction of the language and meaning of the act of Congress of 1818, under which these indictments are framed. That he held, and so instructed the jury, that the words "hire or retain," employed in said act, would be satisfied by less than an absolute contract, founded upon sufficient consideration, and capable of legal enforcement if the same were not made unlawful by the provisions of said act.

3. The weight of the evidence was clearly and decidedly that no person was "hired or retained to enlist, or to leave the United States," with intent to enlist; but the several persons sent to Halifax were engaged to go, and were sent there, with the distinct understanding that they were there to determine whether they would or would not enlist, and were, *until then*, entirely free and at liberty, bound by no contract or engagement, and therefore having no intent, &c., within the meaning of the act of Congress.

4. The verdict was against the evidence; and

5. The verdict was against the law.

THEODORE CUYLER.
STEPHEN S. REMAK.

And now, October 12th, 1855, the motion for a rule for new trial coming on before Honorable John K. Kane, is argued by Theodore Cuyler, esq., and Stephen S. Remak, esq., for the motion; and the same being denied, and new trial refused—

Mr. Van Dyke said: The motion of the defendant for a new trial being refused, I ask leave to present to this court the confession which has been made to me by the defendant, Henry Hertz.

This prosecution has not been merely local in its tendencies, nor the influence of its results likely to be confined to the sphere of an ordinary prosecution in this district. Its results are of a far more extended importance.

The disclosures made in the progress of this cause may be the ground-work of an important step on the part of the federal government in relation to those who have been instrumental in producing that system of interference with our affairs, which has formed the basis of this prosecution. I am permitted to say that the trial which has just resulted in the conviction of this defendant was authorized by the national Executive; and before making the motion which I intend to submit to your honor, I beg leave to read the instructions which I have received in relation to this trial.

Being aware that the system of enlistments had been effectually broken up by the prompt execution of the warrants which I had caused

to be issued for the arrest of various parties, and by the efficient aid which Mr. Wynkoop, the marshal of this district, and his officers, had otherwise furnished me in ferreting out the system adopted for the evasion of our laws, I had supposed there might not be any urgent necessity in pressing the prosecution of the defendants who have just been tried, and had written to the Attorney General of the United States, asking whether it was the desire of the administration further to press these prosecutions. To which I received the answers dated September 12, 1855, and also the letter dated September 17, 1855; both of which I shall take the liberty of reading to the court.

Mr. Van Dyke read the letters as follows:

"ATTORNEY GENERAL'S OFFICE, *September* 12, 1855.

"SIR: In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations:

"Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence to which he may have access, and which can be useful to you.

"I suggest the expediency of trying only *a part* of the cases now, especially if you fail to convict in some leading case.

"But the most important consideration is this:

"This government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspect of its acts—namely, the flagrant violation of our sovereign rights involved in them—has supposed it a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has, in so doing, doubled the magnitude of the national wrong inflicted on the United States.

"This government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted, by reason of a deliberate undertaking of the British government, not only to violate, as a nation, our sovereign rights as a nation, but also to evade our municipal laws, and that undertaking shall be consummated by its agents in the United States; when all this shall have been judicially ascertained, the President will then have before him the elements of decision, as to what international action it becomes the United States to adopt in so important a matter.

"I am, very respectfully,

"C. CUSHING.

"JAS. C. VAN DYKE, Esq.,
"*United States Attorney, Philadelphia.*"

"ATTORNEY GENERAL'S OFFICE,
"*September* 17, 1855.

"SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government.

"It is known that instructions on this subject were given by that government to its officers in the United States. We are told by Lord Clarendon that those officers had 'stringent instructions' so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violate the sovereign rights of the United States.

"But, in the meantime, every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law; while, apparently, he must either have disobeyed his own government, or, in obeying it, have abused his consular functions by the violation of his international duty to the United States.

"In these circumstances, it is deemed highly necessary that the British consul at Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion; that no letter of his be read, except in the due form of evidence; and that, if he have any thing to say, he shall be put on the stand by the defence, in order that he may be fully cross-examined by the prosecution.

"It is clear that he has no right, by any rule of public law or of international comity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer.

"I have the honor to be, very respectfully,
"C. CUSHING.

"JAS. C. VAN DYKE, Esq.,
"*United States Attorney, Philadelphia.*"

Your honor will perceive that the object in this prosecution has been as much to break up the general system which had been adopted by the British government to violate our municipal laws, as it was to punish those who should be found guilty as the instruments of that government.

If the present defendant, since his conviction, has contributed in any manner to aid the government in this investigation, and that aid has been the result of a sincere regret and repentance for his past conduct, it is, in my opinion, but just that he should have the benefit of his present conduct in the sentence which your honor may see fit to pronounce in his case.

I therefore move that the defendant's confession be read, and that it be filed of record among the proceedings in the cause, to be duly considered by the court in the judgment which may hereafter be pronounced against the defendant.

Per curiam. Let the paper be read and filed of record.

The confession is as follows:

UNITED STATES *vs.* HENRY HERTZ. } In the district court of the United States, in and for the eastern district of Pennsylvania.

United States, eastern district of Pennsylvania, ss.

Be it remembered, that on this 11th day of October, A. D. 1855, before me, Charles F. Heazlitt, a commissioner of the United States, personally came Henry Hertz, who, being duly sworn, says:

That some time in the month of January, 1855, I read in the London *Times* a notice of the passage of a resolution of the British Parliament, authorizing the enlistment of a foreign legion. A day or two afterwards I went to the United States Hotel, where I heard three or four gentlemen speaking of this country as a place where enlistments could best be made. One gentleman by the name of Miller pointed at me, as the man best fit for enlisting men for the British service, because, as he said, I am so well known among the German and foreign population. One of the gentlemen sitting there arose and said to me, "I am an English officer; I am not particularly engaged in this matter now, but I can tell you how to embark in it without running any risk, and I would be glad if you would engage in it; but, in order to accomplish this, it is necessary for you to go to Washington and see Mr. Crampton, the English ambassador."

From what I learned afterwards, the name of the gentleman was Mr. Bruce McDonald. Two or three weeks afterwards I went to Washington, and was introduced by many gentlemen by letters to Mr. Crampton. I had obtained these letters without telling those gentlemen the object of my visit; but, before delivering any of these letters of introduction, I addressed a note to Mr. Crampton, requesting an interview with him; that note did not state the object of the interview. The principal object of my visit to Mr. Crampton was to ascertain whether I could safely embark in this enterprise. I was stopping at Willard's Hotel, and in reply to my note, I received the note hereto annexed, marked A. (C. F. H.) (This note has been published in Mr. Strobel's testimony, and will be found, *ante*, at page 145.) After the receipt of this note I called on Mr. Crampton, at his residence; it was on Sunday morning when I called; I saw Mr. Crampton; he said, in substance: "Your letters of introduction assure me that I may have full confidence in you; I have not sufficient authority yet from the home government with regard to the matter, but I expect early authority from Lord Clarendon. I have already received a letter from Lord Clarendon, inquiring how many men might be enlisted in this country for British service, and what the United States government would think of such an attempt. I can tell you this; that if you embark in this matter, you can make a great deal of money; if procuring of men for the English service should be undertaken, it will be very advantageous to you; but I expect a letter from Lord Clarendon by the next steamer, which may be expected in eight or ten days, giving me full explanations and instructions how the matter is to be conducted." In this conversation he had reference to enlistments in this country for the Crimean war. He stated that he had

answered Lord Clarendon's first letter, and that the letter he expected was in reply to his answer. He did not state the contents of his answer to Lord Clarendon's letter. He then said, "I have nothing more to tell you to-day, but when I receive Lord Clarendon's letter I will write to you." I returned to Philadelphia, and should have thought nothing more of the subject, but about the 5th of February, 1855, I received a letter from Mr. Crampton, through the post office, which letter is hereto annexed, marked B. (C. F. H.) (The letter referred to is published *ante*, second letter on page 145.) I sent him a telegraphic despatch, that I was too much engaged to come to Washington now, but that I would call upon him at Washington as soon as my time would permit it.

I went some days afterwards (say three or four days) to Washington, and saw Mr. Crampton at his private residence: he was indisposed. I told him I had received his letter, and desired to know what I had to do. Mr. Crampton replied, "I have received a letter from Lord Clarendon, which contains the statement that the British government has made arrangements to establish depots at some places in Canada, on the frontier of the United States, in order to receive the men who may be procured in the United States. In pursuance of this information, I have sent my special messenger to the governor general of Canada, and to the commanding general of the troops in Canada, (whose name I believe is Roy,) requesting them to designate the places where depots may be established for the reception of persons who may be procured in the United States." I informed Mr. Crampton that I had incurred expenses already by coming twice to Washington, and that I would have to waste more time until the messenger returned, and that I would have to neglect my business; I therefore requested him to refund to me the expenses already incurred by me. Mr. Crampton replied, "I have at present no money at my disposal, and have no authority to give you any; but I am certain you will be paid not only for your services, but that your expenses will be repaid to you." I asked Mr. Crampton what was to be done? How is the matter to be conducted? He said, "As far as I know, there is a law in the United States forbidding the enlisting of soldiers within the territory of the United States; it is, however, not difficult to evade this law, because who can prevent you from sending laborers to Canada; but we must take care to do this in such a way that it shall not appear in defiance of the government. My idea is, further, that if you have 25 or 30 men together, either yourself or some other confidential person should take them direct by railroad to Montreal, where, I think, a depot may be erected." I then asked him, "When do you think this matter will commence?" Mr. Crampton said, "I cannot say precisely yet, because my messenger will perhaps be prevented from returning to Washington very soon, as the roads are obstructed by ice and snow. It is possible that he will call on you at Philadelphia on his return from Canada, and will give you the necessary information. In the mean time, you may call on our consul, Mr. Mathew, in Philadelphia, and he (Mr. M.) will probably be able to give you the necessary instruction." The conversation with regard to the procuring men was finished, but I reverted again to the law bearing upon the

subject. I asked him, "How am I backed in case a charge is made against me? I have a wife and children."

Mr. Crampton replied, "First, that the law was exceedingly lax; and, secondly, that if any thing should happen, the British government would not allow any one to suffer who had been engaged in assisting them in furnishing the men." I replied that "The popular voice is against this matter;" but Mr. Crampton said, "Never mind about this popular voice; if a house in Liverpool fails, the whole United States trembles." After Mr. Crampton had given me such assurances, and had used the expression, "I give you my word as a gentleman that nothing unpleasant shall happen to you," I then made up my mind to act for the British government. Before I left, Mr. Crampton assured me that he would send a man to my house in Philadelphia, who would make such arrangements with me as would enable me to procure men, and send them to their destination. I then returned to Philadelphia, and waited ten days without hearing anything of the matter. I called then on Mr. Mathew, the British consul in this city. Mr. Mathew received me very politely, and informed me that he was just reading a letter from Mr. Crampton, in which my name is mentioned. He further said, "We (speaking of his government) are very anxious to procure men; but, alas! we have not received any instructions from Canada as to where the depôts are to be erected; however, we expect every day and every hour the return of the messenger." About three, four, or five days after that, I visited Mr. Mathew again; he then said to me, "I would advise you to go down to Washington again, for," said he, "although I do not know of any of the particulars of the case, yet I have no doubt Mr. Crampton does, and can give you all the information necessary." This was about the 15th of February. I went to Washington again, and saw Mr. Crampton, though he was indisposed. All that I could learn from him was, that in a week or two he would send a man to my house in Philadelphia; this man, he said, he expected would be sent from the government in Canada to my house, with instructions and means for the recruiting of men in this country. In this conversation Mr. Crampton also stated to me that if I should get into any difficulty I should employ eminent counsel. He also said that, so far as he could ascertain, the government of the United States would not interfere in the matter. I must distinctly aver that, in particular, this last statement and representation on the part of Mr. Crampton gave me such full assurance that I did not, for one moment, think it possible that I could be charged with a misdemeanor or crime. I thought that the matter had been privately arranged between the United States and the English government; Mr. Crampton endeavored to, and did, leave that impression on my mind. I was led so to believe from what Mr. Crampton said to me. I returned to Philadelphia, and in about a week afterwards, on returning home from my office one day, my wife handed me a slip of paper, on which was written "Joseph Howe, Jones's Hotel, parlor No. 1." She stated that the gentleman whose name was on the paper called and spent with her two hours waiting for me. After dinner, on the same day, I called on Mr. Howe at his hotel, and saw him; he asked my name, which I

gave him. He said he was extremely glad to see me, as his time for staying in Philadelphia was very limited; that he had to go to New York and Boston, where his agents expected to see him in a few days. I asked him what authority he had for engaging me to enlist men for the foreign legion? He answered, "I am authorized by the governor, Sir Gaspard le Marchant, of Nova Scotia, who, in accordance with instructions from the English government, is the only man who had control of the enlisting service for the foreign legion, and the especial control over the depôt in Halifax, established for the men procured in the United States." I told him, "This is all very well, but I have not the pleasure of knowing the governor." He answered me, "Mr. Crampton has given me your directions, and recommended you as a man in whom I can place full confidence." I answered him "that I would believe anything; but I should like to see some documents from Mr. Crampton." He said, "I am sorry that I cannot show you such at present, as the only document I have received from Mr. Crampton was an introduction to Mr. Mathew, and that letter I have already delivered." I said, "I would be satisfied if Mr. Mathew would corroborate his statement, and then I would be willing to act on his proposition." He asked me to see him again the next morning at 9 o'clock. I called at 9 o'clock the next day, and met there Captain Rumberg, Lieutenant Van Essen, and another gentleman by the name of Link, a friend of Mr. Van Essen. Mr. Howe introduced me to those gentlemen, whom I knew before, but had never any conversation with them about the recruiting business. He (Mr. Howe) said, "Gentlemen, I suppose you know Mr. Hertz: he is the only confidential agent for the State of Pennsylvania to get men for the foreign legion." I said to him, "I have not got so far yet, and stand upon my demand of yesterday;" referring to his statements being corroborated. He said, "That is all right; that gentleman" (meaning Mr. Mathew) "knows you already."

This interview was on the 13th March. He said, "I am glad to hear that Mr. Mathew has made all inquiry about your character, and feels fully satisfied." Mr. Howe then said to Mr. Rumberg that he would get a colonelship, and Van Essen a captaincy, and told me by all means to send off those men (Mr. Rumberg and Mr. Van Essen) with the first transport, in that capacity. I answered, that if I was satisfied I would do so. He bowed to these gentlemen, and begged to be excused, as he wished particularly to speak with me alone. They went away. Mr. Howe then said, "I have heard from Mr. Crampton that you are a man of limited means; and as means are necessary, he could furnish me with any amount." I told him I wanted £250 to £300 to start with. He answered, "That is only a trifle. You need not be economical, as money was no object at all. I cannot give you more than $300 at present, as I have drafts on different places, which I will put in the hands of one man, and this man would get authority from me to furnish you with the means you want." "That it would be necessary to get men as quick as possible, and for this purpose I think it would be best to insert some advertisements in the German papers, and in the English papers that are most read by the Irish population, who are her Britannic Majesty's

subjects." I asked him what he meant to insert or advertise—if he thought it proper that I should call for volunteers. He said "that will not do, but I will write you an advertisement which you may insert immediately, without running any risk." He wrote this paper (hereto annexed, marked C. C. F. H. This paper is the original proclamation, published *ante* on page 144,) in my presence, and delivered it into my hands. He also wrote a contract for me to sign, in which I acknowledged myself to be a referee for the governor of Nova Scotia, and was willing to send men. I was to receive $8 for each man sent to Halifax, and extra for each man that was competent to be an officer, £4 extra; and for sergeants I was to receive $4 extra. I did not know at the time that this contract was illegal, and have never received anything for any services I rendered Mr. Howe. Mr. Howe stated in this conversation, in the presence of Rumberg, Van Essen, and Link, that Mr. Crampton had given him the direction of each of us, (referring to Rumberg, Van Essen, and myself,) as the only persons with whom he was to confer in this city, and that Rumberg and Van Essen had been highly recommended to Mr. Crampton by some French ambassador.

He then went to his writing desk, took $300 out, and was handing them to me. I told him, "I do not take any money from you." I had so told him once before, as I actually wanted the money through the hands of Mr. Mathew. I was at this time still doubtful whether I should embark in this enterprise, as all I have been stating now was mere conversation; and I had not done anything at all that could make me liable in any shape or form. I desired to test the question whether I should act or not, thinking that Mr. Mathew would not play any part in this affair if it would be against the law of the country, and I therefore asked that the first step be taken by him.

Mr. Howe then said, "if you would prefer that Mr. Mathew should give you the money, it shall be done so." I answered, that his doing so was a great object to me, as he (Mr. Howe) was only a transient visiter, and could leave the States any time he was disposed; but Mr. Mathew, as a British functionary in this city, would feel himself bound to cover me if anything should happen, or any charge should be made. He said, "I am very glad to hear that you are so cautious, and I will meet your wishes; please call to-morrow morning here at 9 o'clock, and if I have not left the city, I will take you to the room of Mr. Mathew in the same hotel, and he will give you the money; but if I have left, go to Mr. Mathew in his office, and get the money there, if he has not before sent it to your house. I asked him why he staid at Jones's Hotel; he said, as the British consul stopped there, he did so. We shook hands, and I went away. In the course of this conversation, Mr. Howe remarked, "there is no necessity to be afraid of anything; the laws of the land here are but poorly enforced, and £100 might purchase all the laws of the land."

On the morning of the 14th of March I went to Jones's Hotel; Mr. Howe had left, but Mr. Hicks, the book-keeper of Jones's Hotel, handed me an envelope without an enclosure; on the fly or fold of the envelope were written these words: "Go to Mr. Mathew; it is all right." I went to Mr. Mathew's office and saw him there; he told me "

had just sent his clerk up to my residence, 424 North Twelfth street, with $300, which Mr. Howe had requested him to give me; and if I would stay there, or come back again in a quarter of an hour, his clerk would be back, as he wished to have me give a receipt for the money." I remained and conversed about the best plan to begin the matter. Mr. Mathew observed that he would be glad to assist me in anything, but it must be a secret, as his official standing would not permit him openly to have anything to do in the matter. The clerk returned, when the conversation ceased at a signal given to me by Mr. Mathew. The clerk handed the packet to Mr. Mathew, and Mr. M. counted to me $300, and I took the slip of paper marked D. C. F. H., in which the money had been enclosed to me. The following is a copy of this paper in the handwriting of Mr. Mathew:

"Mr. Howe requests the $300 sent may be given to Mr. Hertz, on his receipt in Mr. Howe's name."

He handed me a slip of paper, and asked me to give him a receipt. He said, "be careful to put Mr. Howe's name in it." I wrote the receipt in these words:

"Received, Philadelphia, 14th March, 1855, of Mr. B. Mathew, three hundred dollars on account of the Hon. Mr. Howe."

Mr. Mathew stated further, that "if you want anything for vessels, or means for conveyance, you must go to Mr. Henry Winsor, on the wharf near Pine street, and he will furnish you with anything in his line; that he (Mr. Winsor) had moneys in his hands, or under his control, belonging to Mr. Howe."

I took an office on the 14th of March, and went to the Pennsylvanian and Ledger, and inserted the advertisement written by Mr. Howe. The Ledger notice was an abstract; the Pennsylvanian inserted it at length. Mr. Rumberg attended to the advertisements in the Democrat Free Press. On the 16th of March the business commenced; plenty of men came, and the first day I had so many that I could make a transport. I went down to Mr. Winsor and told him I wanted a conveyance for about 100 to 140 people to Halifax. He said, "There is no possibility to get it from here direct to Halifax, but means are procured to send them from here with his steamers to Boston, and there the regular packets would take them to Halifax; but, at all events, it would not be possible to send such a number before Saturday, the 24th, as the steamer would not go before. I was placed in an unpleasant position, as those men were very poor, and were anxious to start. I was, therefore, necessitated to give them a little money to live. I believe it was the 16th or 17th, in the afternoon, about nine or ten persons, calling themselves English subjects, came to my office. They told me they had just come from the British consul, who had sent them to my office to get tickets, which were left there the same day in the morning by T. L. Bucknell. I told them I would give them tickets if they would bring me a written receipt from Mr. Mathew, as I had my instructions to use those tickets with discretion. They went away; in about half an hour after, a message was sent from Mr. Winsor wishing to see me. I went down; he presented me a letter, addressed to him from Mr. Mathew, in which he desired that Mr. Winsor should get tickets from me, and furnish the people

who had called upon me as English subjects with free passage by the schooner Bonita, of Halifax, Captain Coffin, then lying at Pine-street wharf, and pay the captain $12 for each ticket returned by the captain to Mr. Winsor. I gave Mr. Winsor eight tickets, and he gave me the receipt hereto annexed, marked E. C. F. H. (This receipt will be found *ante*, page 184;) and I saw the captain give to Mr. W. a receipt for $96, as the captain had returned the eight tickets he had received from Mr. W. to him, and bound himself to deliver up those men in Halifax; and further, to return to Mr. Winsor $12 for each man he should not deliver up in Halifax. The captain took the eight men in his schooner, and sailed with them that evening. The same day I wrote a letter to Mr. Howe asking for funds. Mr. Howe's direction was given me by Mr. Mathew. The following morning I got a telegraphic despatch, directing me to call on Mr. Winsor and get funds. I went to Mr. Winsor, and told him I wished $500. He told me that he had an order to pay me $100 only; that Mr. Howe would be here, perhaps, that day or the day after, and he would furnish me with more. At the same time, Mr. W. told me that the steamer Granite State did not belong to him any more, that he had sold her to another firm, and he did not think that the firm would pay a charter for taking passengers; that he did not know, therefore, how he would act to-morrow, as he could not procure any other vessel. I telegraphed directly to Mr. Bucknell, asking him what I should do to get conveyance for my "brave people." I did not get any answer. The reason why I telegraphed to Mr. Bucknell was, that he was the only man to assist the agents in sending away men. Bucknell told me he was the only man that was authorized by Mr. Howe to assist the agents in sending the men to Halifax, as Mr. Howe himself was very much occupied, and travelling from one place to another. To get the people away, I went down to Sandford's line, and made an agreement with Mr. Eldridge to pay him $4 for each man he would take in his steamer to New York, if he could delay the departure of the steamer till Sunday. I wanted to have time to send the men by the steamer Sandford. As Mr. Eldridge did not know me, Mr. Winsor went in and told him that everything that I did he would be responsible for. On the 25th, in the morning, the people were ready to start at five or six o'clock; but as I had no money to furnish Mr. Strobel, who had command of the party, I went up to Mr. Mathew at Jones's Hotel, in his room, at five o'clock, and told him the people were there by the wharf, but Captain Strobel was not willing to start without money, and the poor people wanted to have money in their pockets. He got out of his bed and got $50 and handed it to me, saying, "if that is not enough, I will give you more." I went down to the wharf and gave $25 to Mr. Strobel, and divided the balance among the men who were going—eighty or ninety people. These people were those I had engaged at my office to go. They went off to New York. I went the same night, the 25th, to New York, and went to Delmonico's hotel, where I found Mr. Bucknell sleeping in Mr. Howe's room. I told Mr. B. that the people either were there, or would come, as they left this morning, and asked how they were to be conveyed to Boston. I also told him that Mr. Strobel would be there and receive his

further orders. Mr. Bucknell said that he would make it all right; that I should go to Mr. Barclay, at his private residence, College Place, and he (Bucknell) would soon be there to make further arrangements. I went away and returned to Delmonico's in about an hour. I met there Mr. Strobel, who had arrived; he told me that he wanted money to feed the people; that he was obliged to take them in four different parties, to four different boarding houses in Greenwich street. Mr. Bucknell came down, and we went up to his private room, when he told me that he would go with us himself to Mr. Barclay, at his office in Barclay street, and that I should go with him. I went with him, and he and Mr. Barclay went into an inner room. Mr. Bucknell then came out, and told me to wait in his private room at Delmonico's, that he would come directly and bring the money. He came and gave me $100, which I delivered in his presence to Mr. Strobel, less $5. I gave him $80 at that time, and had given him $15 before, that morning. We went together to the Astor House, where Mr. Bucknell telegraphed to Mr. Mathew to tell Mr. Cumberland (which means Mr. Howe) not to leave Philadelphia without seeing Mr. Hertz. Mr. Howe, at the time we were in New York, had gone to Washington, and was expected to return in a day or two. I left New York and returned to Philadelphia the same night. Mr. Barclay was the British consul at New York.

On my arrival from New York, I went directly from the depot to Jones's Hotel, where I saw Mr. Howe. This was on the 26th of March. Mr. Howe told me he had returned the same morning from Washington, and as he had received a message from Mr. Bucknell, through Mr. Mathew, he had waited here for the purpose of seeing me, as he was very anxious to see me. He had in the meantime, before my arrival, sent up for Mrs. Hertz to come down and see him, as he was indisposed; but she declined to do so. He told me he had come from Washington, after having a very important interview with Mr. Crampton, and that Mr. Crampton told him that, as far as he could observe, the government of the United States had begun to feel a little uneasy about this matter; in the meantime that I should go on and care for nothing, as I could be quite sure I would get immediate information in case the United States government should determine to prosecute the matter. I told him that I was not afraid, as I had the words of such men as Mr. Crampton and Mr. Mathew that nothing should happen to me. He told me that it was ten o'clock, and he expected to see Mr. Mathew, as he (Mr. Howe) would leave in the midnight train for New York. I told him that I was surprised that he had not sent me any money, as he said I should not be economical with it. He promised to write a note to Mr. Winsor, and all should be made right the next day, but the next day Mr. Winsor told me he had no orders; Mr. Howe had not seen him. Mr. Howe told me to word my despatches calling the men barrels or parcels. Mr. Howe also said, in this last connexion, that I could make a large amount of money; that all I had to do was to blow a trumpet in the streets, and that I could get thousands for the foreign legion; that Mr. De Korponay was highly recommended as a man of great connexion in the West and Texas, and that I should endeavor to see him, and fur-

nish him with the necessary means to start, and that as soon as I had sent him (Howe) word that I had engaged Korponay, he would send me money.

The next morning I received a telegraphic despatch from Mr. Bucknell, asking how many parcels I would send, and that I should hurry them along; that there was another company wanting to join the next expedition, so that they should go to Boston together. I answered him immediately that I supposed 50 to 60 barrels would go off by the Sanford to-day. Some 47 went off by the Sanford that day. When I came to my office a half an hour afterwards, I was arrested. On Wednesday, the 28th of March, I was arrested, and on the 29th I went to Mr. Mathew's office and found Mr. Mathew in a deep conversation with De Korponay. He left Mr. De Korponay and invited me into the next room, and there said to me, "Do not be down-hearted, we will do everything for you in our power;" he meant by "we" Crampton, Howe, and himself. He also said that I should try to give Mr. Howe information of what had happened, and that I should go down to Mr. Winsor and get $200; I went to Mr. Winsor; he told me he had made all right with Mr. Mathew; I went back to Mr. Mathew's, and he (Mr. Mathew) handed the paper marked F. C. F. H., which is now in two parts. This paper Mr. Mathew wrote in my presence. The paper is in the following words:

"Please call at Jones's for $200 left with Mr. Sharwood, the proprietor, by Mr. Howe, at 2 o'clock."

I went up to Mr. Sharwood, the proprietor of Jones's Hotel, and I received $200 from Mr. Hicks, the book-keeper, to whom I showed this paper. The same day I went down to Moyamensing to see Mr. Budd, who had sent me a message that he had no money. I gave him $5. I told him I could not procure bail for him, as the people did not want to go bail for a native who is engaged in a business of this character. My wife accompanied me, on this occasion, to the prison. I returned home with her, and there found a letter addressed to me; afterwards I went out to take a walk with my wife, and walked down Chesnut street, and met the porter of Jones's Hotel—John Allen I think his name is; he asked me if I had received the letter he had left at my house that day, as the British consul had given strict orders that the letter should be delivered as soon as possible. The letter is hereto annexed, marked G. C. F. H., and is the letter I found at my house, on the occasion referred to by the porter. I have seen Mr. Mathew's handwriting. I know his style of writing, and believe this letter marked G to be in his handwriting. The following is a copy of the letter:

"If the sole name in the warrant and indictment is that of Glenroy, the marshal is indictable for false arrest of the other parties.

"The counsel, if such a man as J. Tyler, O'Neall, or Lex, will paint this mean arrest in its true colors; he will prove that the parties interested were solely acting for themselves, with no powerful friend behind them to pay fines, from the sole desire to aid in a war which Europe holds to be the war of liberty; the one a German, the other a Britisher.

"If they have erred, their error is but light. Do these pretending

republican authorities seek to wreak vengeance on them for loving freedom with England better than Russia?

"The counsel's speech should be carefully published, and *will weigh* before a third hearing, which should be obtained.

"If, in truth, the British consul had no part in it, the attempt to involve him should be exposed.

"It may be easily shown Gilroy is not to be believed on oath. Is he a paid spy and traitor to entrap under false names!!

"Honorable marshal! Honorable district United States attorney!

"Honorable men, 'Captain Power,' and 'Lieut. Sommers'!!!

"What is Gilroy's real name?

"Where *really* born? not where he says.

"What his character?

"What his reward?

"Is the German desiring liberty, or the Britisher desiring to aid his country in a war, to be held as a criminal!!!

"What has Russia paid the dominant power for this rigor?"

Some of the men who shipped on the morning of the arrest were not taken by the marshal, and went on to New York.

The book marked H is the book in which the names were entered in my office, together with the three sheets of paper marked H, 1, 2, 3. The names in the back of the book were the applicants for commissions.

The tickets produced in court are the tickets I gave to the men. Howe told me that the N. S. R. C. meant Nova Scotia Recruiting Company, but I might translate it Nova Scotia Railroad Company. I had them printed myself. Mr. Howe told me to print them in this way. The white ticket with N. S. R. and J. H. on it, are tickets which I obtained from Mr. Howe myself; the J. H. are in his own handwriting. I used only eight of these, which were the eight I gave to Mr. Winsor. Those I used had Mr. Howe's seal on in wax.

On Saturday, before Strobel left, I told Mr. Mathew at that time, that the different gentlemen who expected to get a commission were anxious to know what pay they were to receive. He told me he could not exactly tell me, but that I should call on Dr. Williams, and give him his (Mr. Mathew's) compliments, and he would give me Hart's Army List, which would give me the necessary information. I got the book from the Doctor, but could find nothing about the matter. I told Mr. Mathew of the result, and he said I should correspond with Mr. Howe about it, or, if he should see him first, he would mention it to him. The same night, on my return from New York, Mr. Howe told me he had got all the particulars from Mr. Crampton, so far as he knew it, and handed me the paper marked J. C. F. H.

The paper referred to contains a memorandum as follows:

"Ensign, 5-4 sterling.

"Lieutenant, 6-8 sterling.

"Captain, 11 and 2 sterling."

This paper states the pay of an ensign, 5s. 4d. per day; lieutenant, 6s. 8d.; a captain, 11s., and 2s. for rations. Mr. Howe said those prices referred to the per-diem pay. I believe this paper to be in Mr. Crampton's handwriting.

The handbill marked K. C. F. H. (this is the handbill with the Queen's arms on it, already printed, *ante* page 114) is the bill brought me by Mr. Bucknell, together with the white tickets with Howe's seal on them. These bills are the same as those posted in my office. All these bills were destroyed in the presence of Mr. Bucknell the next day, together with the tickets he brought me, except the eight I gave to Mr. Winsor. He brought me nine hundred odd tickets with Mr. Howe's seal on.

When Mr. Bucknell was arrested, Mr. Matthew sent me word by a friend that he would be much obliged to me if I would not call on or correspond with him any more in this case, as he had apprehensions that he was closely watched by the United States officers. The same friend of Mr. Mathew told me it would be best for me to go direct to Halifax. Mr. Bucknell told me the same thing. Before I went to Halifax, I wrote a note to Mr. Mathew. He answered me that he could not do, nor would he do, anything for me in this case, which he had before directly stated to me, and that I had used some improper remarks against him. I answered him, that I was surprised to hear such remarks from him, as I had only said that the functionaries of the British government were perfidious, and I still think so.

I left for Halifax, and had in my possession a letter to Mr. Howe, stating what he ought to do in my behalf. At New York, I went to the office of Mr. Barclay, and saw Mr. Stanley, the vice consul; he spoke with me about Mr. Howe, and told me that he was sorry that such heedless men as Mr. Howe had brought me and other honest people into a scrape without assisting us; he also told me that Bucknell was going to Halifax, and that he (Mr. Bucknell) was in the same position as myself. Mr. Stanley told me that Mr. Mathew had paid Mr. Bucknell's expenses, including lawyers' fees, all the expenses he had incurred, and expressed surprise that the same had not been done for me. Mr. Stanley paid my expenses from Halifax. I met at Mr. Stanley's office Mr. Jesson, who went from this place with Strobel to Halifax. He told me in Stanley's presence, that he, Strobel, and some other officers from Halifax, had been sent to the United States, and were now in the United States, and were under the special control of Mr. Crampton, and any money or funds that they required would be given them by different British officials, and the money which he (Jesson) required for enlisting purposes, he had to obtain from Mr. Crampton himself, and that he would go that same night to Mr. Crampton for that purpose. This was in the first part of June, about the 7th, long after my arrest. Mr. Jesson said he was at that time going on the enlisting business, under the direction of Mr. Crampton, and I saw him send fifteen men on that occasion to Boston, via steamboat, to go from thence to Halifax. Mr. Jesson told me he was then on his way to Washington to obtain money from Mr. Crampton for that purpose; that the whole enlisting business was now entirely under the special supervision of Mr. Crampton, who had taken the matter entirely in his own hands. This conversation was in the office of Mr. Stanley, who paid Mr. Jesson some money in my presence, to pay for fifteen tickets for the men who were to go off that day.

I went with Mr. Jesson to the steamboat, and saw him pay the

clerk of the boat for the passage of these men. I saw the men arrive the next day in Boston. They were taken charge of by another English officer named Thune. He boarded them at different boarding-houses, and told me they were to go to Halifax, I took the Cunard steamer for Halifax, where I arrived on the 9th. I met Mr. Carstensen at Halifax; we took a cab and drove out to Melville island. I saw in the barracks most of the people I sent from here; they were equipped, and were being drilled. The officer received me with great kindness, and Mr. Van Essen went with me to the city. At supper, Mr. Van Essen was called out, and did not return. I met Mr. Howe: on landing from the steamer he greeted me very kindly, but said he had no time to see me, and stepped on board the steamer for England—that was the same steamer I arrived in. The next morning, the 10th, I went again to Melville island to see Mr. Van Essen, who had promised to introduce me to Sir Gaspard le Marchant. I was received by a man calling himself Major Weis, who told me there were strict orders not to allow me to come to the island again. I asked him to show me the order, for, unless I saw it, I would not leave the island if he were twenty times major. He had no written order, and I went on to the island. He sent immediately to the governor for instructions; in the meantime, he ordered the people and officers not to speak with me. In about a half hour the order arrived, and he presented it to me. I told him it was the order of the governor of the province; that I would like to see the order of the military governor, for without it I would not leave. He sent again to the fort, and the commanding English colonel of the forces came himself, and told me that no strangers were permitted to come on to the island. I left, in company with the colonel, in his caleche.

The barracks at Melville island, where the soldiers are kept, are a parcel of wooden sheds, scarcely equal to those in which a good Pennsylvania farmer keeps his cattle. I then went up to Sir Gaspard le Marchant, introduced myself, and told him what I wished. In the beginning he did not desire to have any connexion with me at all; but after I had presented to him, in strong language, the manner in which I had been treated in Philadelphia, as well as in Halifax, he replied it was not his fault, but Mr. Howe's. He also said that Mr. Howe had used $120,000 in the recruiting business, and inasmuch as he had rendered no account of it yet, he could not tell how my account stood; that in the meantime I should give him a written statement of what I wished, and he would answer me the next day. I gave him the statement, and the next day I received the letter marked L, (C. F. H.) (This letter is already published, and will be found *ante* page 146, dated June 11th, 1855.) I left Halifax the next morning. At the time he delivered the letter, which was handed to me by Mr. Wilkins, in the presence of Sir Gaspard, he told me that "when you return to New York, go to Mr. Stanley, and that he, Mr. Stanley, will then be able to settle with you." When I arrived at Windsor I wrote a letter to the governor, Sir Gaspard le Marchant, in which I repeated all that I had said to him the day before, and told him that when I came to New York, if Mr. Stanley had no orders from him, I would publicly call on Mr. Crampton, Mr. Mathew, &c., and make

them account for the inducements held out to me, and through which I was brought into this difficulty. I arrived in New York, two days afterwards, from Windsor, and called on Mr. Stanley; but, as I had anticipated, he had no orders. Mr. Stanley begged me to be quiet, and not make any noise, and assured me that I should be munificently compensated for my services for the foreign legion. I went to Howard's Hotel, where I remained some time. While there, an old gentleman came in, asking me to abandon the English side. I said, "I can't do it."

I returned to Philadelphia about the 15th of June, and waited until the 17th for a letter which Mr. Stanley had promised to write. I did not receive it, and therefore wrote him a letter, in which I requested him to pay for my services—I meant the money the government owed me, and which he promised to obtain. I received in reply the letter marked M. (C. F. H.,) hereunto annexed. (This letter is already published, and will be found *ante*, page 147.)

Previously to my going to Halifax, on the 23d of May, I wrote a letter to Mr. Crampton, in which I stated that I had received information that he (Mr. Crampton) and his secretaries, all together, had said that I was in correspondence with the Russian government, for the purpose of betraying their secrets, and if they did not apologize for making this charge, I would call upon him and the Russian minister to make a statement. To this letter I received the letter hereto annexed, marked N. (C. F. H.) (This letter is already published, and will be found *ante*, page 146.)

All that I did, in procuring and sending men to Halifax, for the foreign legion, was done by the advice and recommendation of Mr. Crampton, Mr. Howe, and Mr. Mathew. I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation of Mr. Crampton and Mr. Mathew. Mr. Mathew knew of both the expeditions I sent. He approved and encouraged me in sending them away. He encouraged me by his advice and counsel, and in giving me money to send them away.

The statement which I now have made, I have made voluntarily, without any inducement other than the regret I feel in having violated the laws of this country, and the desire which now prompts me to make every reparation in my power, by confessing my own fault, and exposing those who have induced me to enter into this illegal business. I make this statement in the hope that it may have its proper influence upon the government of the United States, in relation to any future action in the prosecution against me. I have made it, however, without any promise as to such future action, placing myself entirely upon the clemency of those who have the power to act in the premises.

HENRY HERTZ.

In testimony of all which, I hereunto subscribe my name and affix my seal, this eleventh day of October, A. D. 1855, and in the eightieth year of the Independence of the said United States. [L. S.]

CHARLES F. HEAZLITT,
United States Commissioner.

Mr. Woodbury to Mr. Marcy.

BOSTON, *June* 13, 1855.

SIR: A complaint was brought before me, some days since, against a German named Caufman, for violation of the neutrality laws of the United States, by "hiring or retaining certain persons to go beyond the jurisdiction of the United States, with intent to be enlisted in the service of a foreign prince, Queen Victoria." The disclosures in the investigation of this cause produced other complaints and arrests. An investigation of a week has led to the discovery of many important facts, which I conceive it my duty to communicate in a distinct shape to your department, that the government may adopt any action which it shall see fit.

The provincial government of Nova Scotia has commenced, some two months since, the organization of a foreign legion, destined to serve in the British army in the war now pending in Russia. A proclamation signed by the provincial secretary, L. M. Wilkins, announces that a bounty of $30, and a pay of $8 per month, will be given to every recruit. It further announces that shipmasters bringing to Halifax "poor men desirous of enlisting shall be paid their passages."

The Hon. Joseph Howe, of Nova Scotia, late secretary, and I believe at present one of the railroad commissioners, came to the United States a month or six weeks since, and organized the recruiting service for this legion.

From various disclosures, as well as testimony, I am induced to believe the organization to be as follows:

Two regiments have been organized—one with Polish officers, one with German officers. About three hundred recruits were in depôt at Halifax a fortnight ago; fifty have sailed since from this port to join. The instructions are to enlist no Irish. Germans are sought for. Major Weisse commands at the depôt. Baron Fonescan, Doctor Beale, and Lieutenant Zeimichi, are at Halifax also. The other officers are now in the States, engaged in the business of recruiting.

Information has been given me as to the details of the recruiting service, which I am inclined to credit.

New York has been the place where the enlistment has gone on most actively; Boston the shipping port for Halifax. Mr. Stanley, (a clerk, I believe, in the English consul's office,) and a Mr. Turnbull, are represented as having the organization of the financial department there.

Colonel Smolenski, a Pole, formerly captain in the Polish service, major in the Hungarian war, and in service in Belgium, but lately an engraver, 251 Broadway, room 11, is the chief military officer stationed there: he speaks good English and French. Lieutenant Yesson, a German, and a Pole named Trietarky, (I write from the sound,)

are the other military officers. A Captain Carstensen, a Dane, was here, and has fled; is probably there. Lieutenant Thoman was here, and has fled; is probably there. The inferior agents are boarding-house runners, intelligence-office keepers, &c. Jacoby resides in Christie street, office in Lewis street: Rosenbaum, 353 Greenwich, said to be chief enlisting agent.

The men gathered by these runners are sent on in squads of five to ten to Boston, their passages paid, and consigned to one of two or three German boarding-houses, where they are boarded until they can be shipped in a packet to Halifax.

Dr. Kieckbach, a German, has been, and Captain Sierewski, a Pole, Lieutenant Galitsky, alias Celagi, a Pole, are in charge here of the forwarding of men to Halifax. They pay the boarding-masters, and ship the men in the packets. There are two lines of packets from here to Halifax, and the agents of these lines have advanced the money to pay the charges in Boston, and get their pay and passage-money on the arrival of the squads in Halifax. About fifty Germans have been rejected at Halifax, and most of them returned to New York.

The boarding-masters are allowed four dollars a head for the men they send down; two for the runner, two for themselves. Complaint is made by many of the Germans going down that they are given but $14, instead of the $30 bounty promised, and paid 4*d.* a day instead of the $8 per month, promised in the proclamation.

Recruiting agencies are said to be established at Portland, Philadelphia, and Buffalo, and officers have gone further west to establish others.

Major Platt, represented as being of Mount Air, Canada, and his son, Captain Platt, are probably in charge of this division.

A large number of other officers are spread over the States in this business, some of whose names I am informed of, others not; but their residences I cannot give. There are now in arrest, as witnesses here, about twelve men who have been brought thus far on their way to Halifax. They have seen none but the runners and the forwarding agent here. A gentleman who has been connected with all their business has given much information, and other has been obtained by close investigation.

The agent in Philadelphia is Mr. John Smith; the one in Buffalo, Dr. Aschenfeldt.

I presume these details are sufficient to enable you to form an opinion of the extent and character of the violation of our neutrality now being attempted by the authority of the English government. Since these investigations began here, two squads, of 6 or 8 each, sailed to Halifax, and then, learning of the departure of a packet, I communicated with the collector of the port, who directed a watch to be kept on her; a squad of 21 men were seen to march to her, and were carried off. The agents who accompanied them to the packet are known.

But few enlistments have taken place in Boston, as there are but a few thousand Germans who live here. Now that these arrests have been made here, the shipping port will probably be changed to Phila-

delphia or New York, and soon, I presume, they will send their men to Canada as the safest route.

* * * * * * * * *

The district attorney has been absent from town for several days past, and in the conduct of these examinations has been represented by one of his assistants, who has performed with zeal and intelligence his proper duties. Except in the first case which came up, when we were not aware such important disclosures would be arrived at, I have not had the superior advantages of consultation with the United States attorney himself. Were he here, I should not undertake to give this information to the State Department, as it properly pertains to his official duty. Under the circumstances, however, I trust that neither the State Department nor the United States attorney will conceive that I am departing from propriety, or the respect due to them, in the course I have taken.

* * * * * * * *

I have the honor to be, respectfully, your obedient servant,

CHAS. LEVI WOODBURY,
Commissioner Circuit Court U. S., District of Massachusetts.

Hon. WM. L. MARCY,
Secretary of State.

Mr. McKeon to Mr. Marcy.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, June 18, 1855.

SIR: I have the honor to enclose an affidavit made by Morris Kieckbach, before George W. Morton, esq., one of the commissioners of the United States.

It relates to the means made use of by the colonial government of Nova Scotia to retain men within the jurisdiction of the United States, to proceed to Halifax, there to be entered or enlisted as soldiers of the Queen of Great Britain.

I have the honor to remain, with great respect, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

Hon. W. L. MARCY,
Secretary of State.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, Morris Kieckbach, of No. 206½ Canal street, physician, do swear that, about five months since, deponent arrived at this city from Brazils, and, at the instance of several families, went to Montreal, there to settle as a physician and surgeon. At Montreal deponent heard that the British government was about to form a foreign legion to go

into the service on the continent, and that the authorized agent of the government was then at Boston. I then went to Boston, and found Colonel Smolenski and Captain Carstensen. Smolenski was to raise a Polish regiment, and Captain Carstensen was to have a command in the battalion of Germans raised by Major Weisse. Smolenski introduced me to the honorable Joseph Howe, in Boston. He boarded at the Tremont House. This was about the 26th to the 28th of April last, or perhaps a day or two later. Mr. Howe declared himself to be the agent of the colonial government of Nova Scotia, and acknowledged me as staff or regimental surgeon to the Polish officers' regiment under Smolenski, and at the same time this deponent was engaged as the representative and agent, in lieu of Smolenski, at Boston. This deponent's duty, as such agent, was to receive the persons who had been enlisted and sent to Boston, to bring them into boarding-houses, ship them to Halifax, pay their debts, receive money from Clark. Jones, & Co., for account of Howe, and to pay $4 a head for each man to the agent who had enlisted them. I acted as such agent to the 18th May. I drew $327, Captain Carstensen $949, and Colonel Smolenski $465. Some of the men—say about 50 of 200 that I had sent—had been rejected at Halifax, who reproached me for having inveigled them. I then went myself to Halifax. I there received permission from Governor le Marchant and Messrs. Howe and McDonald to visit Melville island, which is used as a depot for these men. I found there about 200 soldiers, who were very discontented. There was another house in Boston which paid agents' fees, viz: Sprague, Soulé, & Co.

I represented to Governor le Marchant that the men were discontented, and he promised to see them satisfied. He referred me to Mr. Crampton, the British minister at Washington, who was to refund me what I had advanced out of my own funds, and to arrange with him about the further organization. He said that he (the governor) had no further power; that the Home Office had transferred it to Mr. Crampton. I was told I would find Mr. Crampton at Washington, or at the British consulate of Mr. Grattan, in Boston, between the 5th and 15th June. Not finding Mr. Crampton there, I spoke to Mr. Grattan, who also referred me to Mr. Crampton, and said that he would not be in Boston. I then went to New York, and spoke to Vice Consul Stanley, British vice consul at New York. Mr. Stanley told me he heard and read that there was a warrant out against him; that there were many spies about, and that he had no order to pay me; and when I spoke to him about Mr. Crampton, he said that all my business with Crampton must come through him.

Dr. M. KIECKBACH.

Sworn to before me, June 18, 1855.

GEORGE W. MORTON,
United States Commissioner.

THE SEIZURE OF THE BARQUE MAURY.

Report of the Committee of the New York Chamber of Commerce, November 27, 1855.

The committee appointed by the Chamber of Commerce to ascertain and report the facts connected with the late seizure of the American barque "Maury," on the information of Mr. Barclay, her Majesty's consul at New York, respectfully submit, for the information of the chamber, the following documents:

No. 1. Mr. Hunter, Assistant Secretary of State, to Attorney General, October 12, 1855.

No. 2. Telegraphic despatch from Attorney General to United States attorney, New York, October 12, 1855.

No. 3. Attorney General to Secretary of State, October 12, 1855.

No. 4. United States attorney, New York, to her Britannic Majesty's consul, October 13, 1855.

No. 5. Same to collector of port, October 13, 1855.

No. 6. Attorney General to United States attorney, New York, October 13, 1855.

No. 7. Her Britannic Majesty's envoy, &c., to Secretary of State, with four affidavits, October 11, 1855.

No. 8. United States attorney, New York, to Charles Edwards, esq., October 16, 1855.

No. 9. Deputy surveyor of port to United States attorney, New York, October 15, 1855.

No. 10. Inspectors of customs to surveyor of port, October 15, 1855.

No. 11. United States attorney, New York, to Attorney General, October 17, 1855.

No. 12. Same to United States marshal, October 17, 1855.

No. 13. United States marshal to United States attorney, October 19, 1855.

No. 14. Messrs. Low to same, October 18, 1855.

No. 15. Charles Edwards, esq., to same, October 19, 1855.

No. 16. United States attorney, New York, to Attorney General, October 19, 1855.

No. 17. Attorney General to Secretary of State, October 19, 1855.

No. 18. Same to United States attorney, New York, October 22, 1855.

No. 19. Same to Secretary of State, October 22, 1855.

No. 20. United States attorney, New York, to Attorney General, October 20, 1855.

No. 21. A. A. Low & Brothers to John A. Stevens, chairman of committee of Chamber of Commerce.

No. 22. Depositions of J. N. Cornell and Wm. D. Craft, police officers, before the mayor, November 23, 1855.

Your committee have sought no further evidence, as all the facts and suspicions are comprised in these papers. Proceeding to consider their import, it is to be remarked that the firm in question are American merchants of this city, having a number of vessels, chiefly employed in the Pacific, China, and India seas; being, perhaps, more largely engaged in this branch of commerce than any other house in the United States; that they are directors and managers in many important commercial institutions, are of high commercial standing, and are well known as men of probity and honor.

Your committee find that the barque "Maury" was built in this city during the past summer for this firm; that she was advertised by them for thirteen days before the date of the affidavit, under their own name, in five daily papers, to wit: the *Courier and Enquirer*, *Journal of Commerce*, *Commercial Advertiser*, *New York Express*, and *Evening Post*, for Shanghae, in China; was loading wholly on freight; and never having taken her first clearance, her register had not been then issued from the custom-house; that there was on board an armament of four guns, with a moderate supply of small-arms, and also ten guns on freight, and that other cargo was being received. These guns were first placed in the lower hold, as temporary ballast; were afterwards raised to the between-decks, and were never concealed in any way whatever. Such armament and freight are not unusual for vessels bound for the China seas; and vessels similarly equipped have heretofore been despatched from this and other ports in the United States, without suspicion or notice; and, apart from other circumstances, armament and guns in the China trade afford no cause to suspect any intended infraction of the neutrality or revenue laws, nor any intended illegal or questionable employment. Your committee have not been able to ascertain, and do not believe, that there were any other facts which could reasonably lead to such suspicions in regard to this vessel. It is manifest, however, that they were entertained by the British consul here, and by the British minister at Washington; for upon the affidavits and statements submitted by these functionaries, without a full ascertainment of the truth in a matter so important, and without an inquiry from the owners, and chiefly on an oath of belief, without a statement of the facts on which it was founded, the "Maury" was taken possession of by the United States marshal, on the afternoon of the 17th of October, under process from the United States court, founded on a libel, sworn to by the British consul, as forfeited for a breach of the neutrality laws.

In view of your committee, the feelings of a respectable firm, and the character of New York merchants, have been needlessly disparaged and assailed, through heedlessness and culpable want of inquiry, or strange credulity on the part of those making the representations to the officers of the American government; for it is clear that in the lapse of seven days, between the day on which the affidavits were made and the day of the seizure, the true destination of the vessel,

and all the facts of the case, could have been ascertained. The statement of Messrs. Low, so satisfactory after the seizure, could have been as easily obtained before it was made, by a simple application to them. Their advertisements of the vessel were in five daily papers, from the 27th of September to the 24th October; and the seizure, upon suspicions so carelessly, so credulously entertained, is truly remarkable.

The appearance of the marshal was the first intimation to the house that their standing and character had not protected them from the charge of being engaged in an unlawful and disgraceful undertaking. But these slanderous affidavits could not stand an examination, and instantly vanished before their simple statement. The exhibition of the unaccountable misapprehension, ignorance, and credulity, on which the charge was based, alone survives. The proceeding of Mr. Barclay was withdrawn on the second day—one day being lost by his unwillingness to act at all without seeing Mr. Edwards. The chamber will remark that the affidavits were all sworn upon the same day, (the 10th of October,) and that the steamer Pacific, which left this port on the 17th of October, took out the information which has caused so much excitement and alarm on the other side of the Atlantic, unless it was forwarded by a preceding steamer. This information, thus hurried off prior to the seizure of the "Maury," was *ex parte* entirely, and no explanation could accompany it. By a public card of the 20th instant, Mr. Barclay denies "having written a despatch to her Majesty's government in regard to that ship." Therefore, from whom it emanated, and by whose indiscretion the relations between the two countries were rudely jarred, is wholly in the dark. The letters of Mr. Barclay and Mr. Crampton leave upon them the burden of answering the inquiry. Your committee were greatly surprised to observe, by Mr. Crampton's note to the Secretary of State, that he had been informed by Mr. Barclay not only that "he has good reason to believe that this vessel (the 'Maury') is intended for the service of Russia in the present war, but that a plan exists for fitting vessels of a similar description in other ports of the United States, with the express design of committing hostility against her Majesty's government, and more particularly of intercepting and capturing the British mail steamers plying between Liverpool and Boston." For such a statement your committee have been able to find no warrant in the affidavit by any person, or of any fact, or indeed of any belief. They believe that no fact exists warranting any such statement, and they share a common surprise that any man living in this city, or having communication with it, should for a moment believe it. On the contrary, the committee have it from the highest authority that the government has no knowledge, belief, or suspicion that any privateer, or other armed vessel, is fitting out, or has been fitted out, in this country, for or against any of the European belligerents.

The committee further report, that the following card from the British consul appeared in the New York *Herald* of the 24th October, and do not find that it was published in any other paper:

"Misrepresentations on the above subject (regarding the 'Maury') having been published in various newspapers, among others that munitions of war were found on board 'secreted under a quantity of cot-

ton,' I desire to disabuse the mind of the public of that impression by stating that such was not the case.

"Had my endeavors, made before information was formally lodged, to ascertain the owners of the ship 'Maury' succeeded, the explanations which that respectable firm (Messrs. A. A. Low & Brothers) gave after the libel was filed would have been sought by me, and no doubt would have been given before, and the course which was adopted would not have been resorted to.

"A BARCLAY,
"*Her Britannic Majesty's Consul.*

"NEW YORK, *October* 23, 1855."

This publication was not in time for the next steamer, which sailed from Boston for Liverpool the same day. It is for the chamber to consider whether this card was an adequate atonement to the house whose vessel had been seized, or to this commercial community; or whether, in so grave a matter, affecting the sensibilities of two great nations, the most speedy and wide-spread recantation was not due to both—alike from the British consul and the British minister.

The government of the United States, from the time of the administration of Washington to the present case of the "Maury," during all the contests which have existed since their independence, has, without fear or partiality, strictly enforced the rigid neutrality laws of the United States.

Although lawless men have sometimes escaped its vigilance, no administration of this government has given reason to doubt its determination to maintain them. When the authorities by accident have not been able to prevent the offences, they have uniformly brought the offenders to trial at the earliest opportunity; and such trials have always been made with all the urgency which is consistent with justice.

It is due to our country briefly to recall the features of our neutrality laws. They not only express the political but commercial sentiment of the country. First enacted in 1794, they have been continued and made more effectual by repeated subsequent enactments. No laws are more widely or generally known among public men. They forbid any citizen to accept any commission to serve against any people in peace with the United States. They forbid foreigners transiently within the United States, or on board any vessel within its jurisdiction, to enlist, or to go abroad to be enlisted, in the service of any nation at war with any such people. They forbid the fitting or arming any vessel, or increasing the armament of any armed vessel, with intent to be employed in any such service.

They forbid all military expeditions against any nation at peace with the United States, from the beginning, to provide means therefor, to the actual departure of such expeditions. They forbid the being concerned in fitting out any vessel to commit hostilities against any nation at peace with the United States.

These laws are the well-known expression of public opinion, and the common sentiment of the country. They have been enforced, as occasion required, against and in favor of all nations alike—against France, our earliest ally; in favor of Spain, when we had serious

questions with her; against the weak and rising republics of this continent; and now, without partiality or fear, against England, the most warlike and the most commercial of nations having relations with us.

The Chamber of Commerce of New York, holding these enactments as binding equally in law, honor, and conscience, claim but a common right in asserting that a charge of violating them—a charge which they deem a disgraceful impeachment—should not be lightly made, nor without careful inquiry, against any of their members.

The committee unanimously recommend to the chamber the adoption of the following resolutions:

1. *Resolved*, That the Chamber of Commerce of New York receive and adopt the report, as a correct statement, and as containing the sense of this body on the subject.

2. *Resolved*, That no proper amends or apology have been made to A. A. Low & Brothers, for the charge brought against them, which, if true, would have rendered them infamous; nor to the merchants of this city and country, so falsely and injuriously assailed.

3. *Resolved*, That the merchants of New York, as part of the body of merchants of the United States, will uphold the government in the full maintenance of the neutrality laws of the country; and we acknowledge and adopt, and always have regarded the acts of the United States for preserving its neutrality, as binding in honor and conscience, as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence.

All of which is respectfully submitted.

JOHN A. STEVENS,
GEORGE GRISWOLD,
P. PERIT,
E. E. MORGAN,
THOMAS TILESTON,
CHARLES H. MARSHALL,
STEWART BROWN,
MOSES H. GRINNELL,
ROYAL PHELPS,
ROBERT C. GOODHUE,
JAMES LEE.

NEW YORK, *November* 27, 1855.

APPENDIX.

No. 1.

DEPARTMENT OF STATE,
Washington, *October* 12, 1855.

SIR: By direction of the Secretary of State, I have the honor to enclose a copy of a note of the 11th instant, addressed to this depart-

ment by Mr. Crampton, her Britannic Majesty's minister, and of the affidavits which accompanied it, relative to a vessel called the "Maury," which is stated to have been fitted out at New York, in violation of the laws of the United States, for the purpose of cruising against British vessels.

I have the honor to be, very respectfully, your obedient servant,

W. HUNTER,
Assistant Secretary.

Hon. CALEB CUSHING, *Attorney General.*

No. 2.

WASHINGTON, *October* 12, 1855.
(*By telegraph.*)

Mr. Crampton alleges that the vessel called "Maury," in Dover-street dock, is armed for war against England. Please take information from Mr. Barclay, and prosecute if cause appears.

Copies by letter to morrow.

C. CUSHING.

JOHN MCKEON, *Attorney U. S., New York.*

No. 3.

ATTORNEY GENERAL'S OFFICE,
October 12, 1855.

SIR: I have the honor to inform you that, in consequence of the information communicated this day by Mr. Crampton, the minister of Great Britain, in regard to the vessel called the "Maury," instructions have been despatched to the attorney of the United States in New York to advise immediately with Mr. Barclay, the British consul there, and to institute the proper legal proceedings in the case, if sufficient cause to justify the same shall appear.

I am, very respectfully,

C. CUSHING.

Hon. WM. L. MARCY,
Secretary of State.

No. 4.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, Oct. 13, 1855, 9½ *A. M.*

SIR: Late last evening I received from the Attorney General of the United States a telegraphic despatch, requesting me to obtain infor-

mation from you, in relation to a vessel in this port, supposed to be engaged in a violation of our neutrality laws.

I called this morning at 9½ o'clock at your office, with the marshal of this district, but the office was not open. Will you do me the favor to call at once at my office, or send to me the information, so that I may act?

With great respect, I remain, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

ANTHONY BARCLAY, Esq.,
Consul of her Britannic Majesty.

No. 5.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 13, 1855.

SIR: You will please send at once on board of a vessel called the "Maury" an inspector, and examine into her cargo.

She lies at Dover-street dock. You will please delay her clearance until a report is made to me of her cargo.

Very respectfully, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

H. J. REDFIELD, Esq.,
Collector, &c.

No. 6.

ATTORNEY GENERAL'S OFFICE,
October 13, 1855.

SIR: Yesterday I telegraphed you concerning the ship "Maury," said to be fitting out in New York, in violation of the statutes of the United States.

I now enclose to you a copy of a despatch from Mr. Crampton, the British minister, dated the 11th instant, to which I there referred. With this document before you, and the information which Mr. Barclay may impart, you will be able to understand what further it may be proper for you to do in the premises.

I am, very respectfully,

C. CUSHING.

JOHN McKEON, Esq.,
United States District Attorney.

No. 7.

BRITISH LEGATION,
Washington, October 11, 1855.

SIR: I have the honor to call your attention to the enclosed depositions, which have to-day been forwarded to me by Mr. Barclay, her Majesty's consul at New York, in regard to a vessel called the "Maury," which is now fitting out at that port, and which, it appears, is evidently intended for warlike purposes.

Mr. Barclay further informs me that he has good reason to believe that this vessel is intended for the service of Russia in the present war, and also that a plan exists for fitting vessels of a similar description in other ports of the United States, with the express design of committing hostilities against her Majesty's government, and more particularly of intercepting and capturing the British mail steamers plying between Liverpool and Boston.

However this may be, the circumstances stated in the enclosed affidavits are of so positive a nature, and bear so suspicious an appearance, that I feel it to be my duty to call the attention of the United States government to the matter, with a view to an inquiry into the facts; and if these shall be confirmed, to the adoption of such measures on the part of the United States authorities as may defeat the hostile intentions which appear to be entertained by the persons engaged in fitting out the vessel or vessels in question.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

The Hon. WM. L. MARCY.

City, County, and State of New York:

Anthony Barclay, her Britannic Majesty's consul for the State of New York, being duly sworn, doth depose and say: That from information given to him, he verily believes, and expects to be able to prove, that a certain new vessel, now in the port of New York, called the "Maury," has been built, fitted out, and armed, with intent that such vessel should be employed by the Russian government to cruise and commit hostilities against the subjects and property of the Queen of Great Britain, with whom the United States are at peace, and this deponent stands ready to bring forward his proof thereof; and he respectfully claims that proceedings be had and taken, whereby the said vessel, with her tackle, apparel, and furniture, together with all material, and ammunition, and stores, which may have been procured for this building and equipment thereof, shall and may be forfeited.

ANTHONY BARCLAY.

Sworn to this 10th day of October, 1855, before me,

GEORGE W. MORTON,
United States Commissioner.

City, County, and State of New York:

John N. Cornell, of New York city, police officer and dock-master of the eleventh ward, being duly sworn, maketh oath and saith: That his suspicions have been excited for several weeks past by the appearance of a new three-masted, square-rigged schooner, which was lying at the foot of Stanton street, New York, up to Monday evening, the 8th of October, when she moved down to Dover-street dock, and is there now: that she has the name of the "Maury" upon her stern, but has never yet been out of port, and deponent has ascertained at the custom-house of the port of New York that she has not at present got her register; that this deponent is well acquainted with the build of vessels, and he has no hesitation in deposing that this vessel, named the "Maury," is built, rigged, and equipped for warlike purposes, and has not the construction of a vessel for the merchant service; that his suspicions were particularly aroused from the nature of her cargo she has taken on board, which consists of war cannon, cannon balls, small arms, coals, sixty or eighty extra spars, and other mercantile articles; that this deponent, within a few days last past, has been over the whole of the said vessel; at the bottom of the said vessel, and just above what appears to be intended as ballast, are from two hundred to three hundred square boxes, containing cannon balls; also, there are from eighteen to twenty cannon intermingled with the said boxes, apparently so that they may pack well; on the top of the cannon is a large quantity of coal, while on top of the coal is a lot of lumber and the aforesaid extra spars; in the lockers of the cabin is a very large quantity of guns, pistols, swords, and other implements of war; and this deponent verily believes that she is so fitted out for warlike purposes; her cannon are all mounted, and she has port-holes for cannon. And this deponent further says, that a person who assumes to act as first mate of the vessel showed her to deponent, and remarked she had a curious kind of cargo, and the manner of the mate was such as to make deponent believe that the vessel was going on a warlike voyage; the said mate told deponent that some of the aforesaid cannon were for eighteen and twenty pound ball, and that the cannon on the main deck were for nine pound ball caliber; deponent saw the mark "23" upon one of the cannon, and the mate said that was the number of the cannon; and this deponent further saith, that from all he knows and has been informed, and has observed, he believes that the said vessel, the "Maury," has been built, and armed, and equipped as aforesaid, by the Russian government, or its agents, to be used for war purposes against Great Britain; and he hereby informs against her and her equipment accordingly.

JOHN N. CORNELL.

Sworn at the city of New York, second circuit, the 10th day of October, 1855, before me,

GEORGE W. MORTON,
United States Commissioner.

City, County, and State of New York:

Charles Edwards, of the city of New York, counsellor at law, being sworn, maketh oath and saith, he verily believes the new vessel "Maury" has been built, equipped, and loaded by and for the Russian government, to be used in the present war against the vessels and subjects of Great Britain.

That a person, who deponent believes has been in the pay of Russia, gave him a full explanation of the armament on board the said vessel, which tallies with the statement contained in the affidavit of John N. Cornell, hereto annexed, except that the explanation to this deponent was much more minute.

Also, this deponent gathered from the person referred to, that the said vessel, the "Maury," when outside of port, would ship a new crew of about eighty men, and she would be employed at first more particularly in attempting to overhaul some one or more of what are known as the "Cunard steamers," (British vessels,) and take them as prizes, put additional coal on board, and guns, and then go in company; while there were also other vessels built and fitted out by the Russian government similar to the "Maury," who were ready to join her on a similar errand, with an ultimate destination against British possessions in the eastern hemisphere.

CHARLES EDWARDS.

Sworn at the city of New York, second circuit, the 10th day of October, 1855, before me,

G. W. H. MARTIN.

City, County, and State of New York:

William D. Craft, of New York, first lieutenant of police, of the eleventh district of police for the city of New York, being duly sworn, doth depose and say: That on the 6th day of October, instant, he went on board a new vessel called the "Maury," then lying at the foot of Stanton street, New York, and was shown over her. On her upper deck were six cannon, all mounted, and port-holes for the guns, and between-decks were ten cannon, all mounted; also, deponent saw a quantity of horse-pistols in the cabin; there was coal on board, and deponent was informed that there were a number of guns underneath the coal. Deponent also discovered boxes between-decks. The between-decks were all clear fore and aft, with the exception of pump-well and chain-box. She was painted white between-decks, with the exception of the lower side of the deck-beams, they being of yellow pine. And this deponent also saith, that he was a ship-carpenter by trade, and from his observation of the particular build, furniture, and apparel of the said "Maury," he believes she is a vessel of war.

WM. D. CRAFT.

Sworn at the city of New York, second circuit, the 10th day of October, 1855, before me,

G. W. H. MARTIN, *M. Cir.*

No. 8.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 16, 1855.

SIR: I have prepared a libel against the ship or vessel called the "Maury," upon the facts laid before the government by her Britannic Majesty's envoy at Washington.

A verification of the pleading is required to be made by some party officially recognised as representing her Britannic Majesty's government at this port.

I am, very respectfully,

JOHN McKEON,
United States District Attorney.

CHARLES EDWARDS, Esq.

No. 9.

CUSTOM-HOUSE, NEW YORK,
Surveyor's Office, October 15, 1855.

SIR: I enclose report of district officers who examined the barque "Maury," pursuant to instructions. This barque is new, and has not yet taken out her register; said to be owned by Low & Brothers, whose vessels are all, I believe, engaged in the China trade.

Very respectfully, your obedient servant,

J. L. BENEDICT,
Deputy Surveyor, for Surveyor.

H. J. REDFIELD, Esq., *Collector.*

No. 10.

NEW YORK, *October* 15, 1855.

DEAR SIR: Pursuant to instructions, we have been on board the barque "Maury," and find her laden on her ground-tier with coal, and naval stores above the coal.

She was taking on board, on Saturday last, the 13th, cases of goods, casks of hardware, scales and beams, pickles, preserves, and catsups.

She has on her lower deck *ten*, and on her upper deck four cannon, all mounted.

The dock clerks say she is loading for Shanghae, to go in the opium trade.

Yours, respectfully,

JACOB BITTEL,
A. W. SHADBOLT,
Inspectors.

JOHN COCHRANE, Esq.,
Surveyor of the Port.

No. 11.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I have the honor to report that, acting on the communication from you, and after consultation with Mr. Barclay and his legal adviser, I have this day filed a libel on the admiralty side of the United States district court against the vessel assuming to be called the "Maury," under the 3d section of the neutrality act of the 20th of April, 1818.

With high respect, your obedient servant,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General of United States.

No. 12.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 17, 1855.

SIR: I take the liberty to request that you will have the cargo of the "Maury" carefully examined, and communicate to me the result.

It is proper for me to state, that it is supposed that you will find munitions of war stowed under the lading of coal on board.

Very respectfully,

JOHN McKEON,
U. S. District Attorney.

A. T. HILLYER, Esq.,
U. S. Marshal, Southern District New York.

No. 13.

SOUTHERN DISTRICT OF NEW YORK,
U. S. Marshal's Office, N. Y., October 19, 1855.

SIR: In reply to your communication of the 17th instant, requesting me to have the cargo of the "Maury" carefully examined and report to you the result, I beg leave to inform you that I have ascertained there are 250 tons of coal in the run of said vessel; 10 iron cannon between decks, mounted on wooden carriages; 4 ditto on deck; a number of boxes containing muskets, not opened; a number of small and side-arms in the cabin; a lot of shot, and an assorted cargo, lumber, &c. Should it be deemed necessary to have the cargo thoroughly overhauled and the coal taken out, the expense attending such labor

would not be less than $150 or $200. Awaiting your further instructions in the case,

I remain your obedient servant,

AB. T. HILLYER,
United States Marshal.

JOHN MCKEON, Esq.,
United States Attorney.

No. 14.

NEW YORK, *October* 18, 1855.

SIR: The barque "Maury," owned in part by the undersigned, having been seized by a process from your office, we beg to offer the following explanations, viz:

That the said vessel was built by Messrs. Roosevelt, Joice, & Co., of this city, under a contract made in the month of April last, after the model of the barque Penguin; that she was designed for the China trade; that there is nothing peculiar in her construction, apart from the rig, which was adopted with particular reference to economy in men; that, in pursuance of the original intention, she was advertised some three weeks since for Shanghae, since which she has been receiving freight for that port; that she has on board, from Messrs. Fogg & Brothers, 200 tons of coal, a quantity of naval stores, and a variety of ship-chandlery, for their house in China, with a little other general freight, with which she is expected to sail the coming week, under the command of Captain Fletcher, for the port above named.

We further declare, that in addition to the ordinary armament of a vessel of her class, she has but two deck guns, supposed to be necessary in consequence of the great increase in the number of pirates on the coast of China; that the other guns, shot, &c., on board, as per subjoined list, were purchased under an order from an American gentleman at Canton, and shipped per "Maury" on freight; that said vessel has four spare spars, one fore-topgallant mast, one fore-topgallant yard, one main boom, one main gaff-boom, and five extra studding-sail booms; and that her crew will consist of but twelve or fourteen men before the mast.

They furthermore declare that the vessel received the name of "Maury" in the month of May last, not to dishonor a man of whom our country has so much reason to be proud, but to bear upon an honorable mission the name of him who has done so much to improve navigation.

The undersigned pledge themselves to prove to the satisfaction of the British consul, while the vessel is still under the charge of the United States marshal, that the allegations made against the vessel are false; that she has no guns or materials of war under her coal, asking only that the expense to which they may be thus subjected shall be borne by the said consul when, and only when, the

statements upon which the vessel has been so unjustly seized are fully disproved.

Finally, they declare that the Russians have no connexion whatever with the enterprise in question.

A. A. LOW,
Of the Firm of A. A. Low & Brothers.

Hon. JOHN MCKEON,
U. S. District Attorney.

On freight 10 guns, 62 boxes of shot.

Sworn to before me, this 18th day of October, 1855.
GEORGE F. BETTS,
U. S. Commissioner.

I hereby swear that I am cognisant of the facts mentioned in the foregoing statement, and that they are true.
NATH. B. PALMER.

Sworn to before me, this 18th day of October, 1855.
GEORGE F. BETTS,
U. S. Commissioner.

No. 15.

In the matter of the "Maury."

NEW YORK, *October* 19, 1855.

DEAR SIR: From the explanations made in the case by Messrs. A. A. Low & Brothers, under oath, and your own very proper suggestions, I deem it reasonable that you should be left entirely free; confessing that, although statements to me were very strong, it would be but fair towards the owners to "lift" the libel.

I remain, dear sir, yours always, very respectfully,
CHARLES EDWARDS.

JOHN MCKEON, Esq.,
U. S. District Attorney.

No. 16.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, October 19, 1855.

SIR: Since filing the libel against the barque "Maury," reported to you on the 17th instant, I have been attended by one of the firm of A. A. Low & Brothers, the owners of the "Maury," who furnished me an original statement, which I enclose.

Charles Edwards, esq, was present when the explanations were made, and has addressed to me a letter, of which I transmit a copy. Upon a full view of all the circumstances, I deemed it right to order a discharge of the vessel, and to ask your concurrence in dismissing the libel.

I have the honor to remain, sir, your obedient servant,

JOHN McKEON,
U. S. District Attorney.

Hon. CALEB CUSHING,
Attorney General U. S.

No. 17.

ATTORNEY GENERAL'S OFFICE,
October 19, 1855.

SIR: I have the honor to enclose herewith a copy of a letter this day received from Mr. McKeon, attorney of the United States for southern New York, reporting the institution of process against the vessel called "Maury," as to which complaint has been made by the British minister, alleging that said vessel is armed, in violation of law, to cruise against a friendly power.

I am, very respectfully,

C. CUSHING.

Hon. WILLIAM L. MARCY,
Secretary of State.

No. 18.

ATTORNEY GENERAL'S OFFICE,
October 22, 1855.

SIR: I have received your letter of the 19th instant, communicating the result of inquiry regarding the barque "Maury."

The allegation against that vessel was improbable on its face; but, determined as the President is not to suffer any one of the belligerent powers to trespass on the neutral rights of the United States, it was deemed proper to investigate the case, out of respect for the British minister, through whom the British consul at New York preferred complaint in the premises.

It is made manifest, by the documents which you transmit, that the suspicions of the British consul as to the character and destination of the "Maury" were wholly erroneous; and justice to her owners and freighters requires that the libel against her be dismissed.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. JOHN McKEON,
Attorney of United States, New York.

No. 19.

ATTORNEY GENERAL'S OFFICE,
October 22, 1855.

SIR: I have the honor to communicate to you the history and result of the proceedings in the case of the barque "Maury," of New York.

In consequence of the British minister's communication to you of the 11th instant, and which you referred to me on the day of its receipt, (the 12th,) brief instructions were on the same day despatched by telegraph to Mr. McKeon, attorney of the United States for the southern district of New York, and more detailed instructions by mail the next day, requesting him to make immediate inquiry on the subject of the "Maury," to consult thereon with Mr. Barclay, the British consul at New York, and, if sufficient probable cause appeared, to institute the proper process against her in the district court.

These instructions were induced by the documents communicated by the British minister, copies of which were transmitted by me to Mr. McKeon.

The documents consisted of—

1. An affidavit by Mr. Barclay, setting forth that he believed, and expected to be able to prove, that the "Maury" was built, fitted out, and armed, with intent to be employed by the Russian government to cruise against the subjects of Great Britain, and that he stood ready to bring forward his proof thereof.

2. An affidavit of one Cornell, purporting to be a police officer in New York, who professes to describe the build, equipment, armament, and cargo of the "Maury," and concludes with expression of belief that she was built, armed, and equipped by the Russian government for war purposes against Great Britain.

3. An affidavit of one Craft, also purporting to be a police officer in New York, who speaks more guardedly, briefly describes the visible armament of the "Maury," repeats hearsay as to her freight, and expresses belief that she is a vessel of war.

4. Finally, the affidavit of Mr. Edwards, a counsellor-at-law in New York, understood to be counsel for the British consul, who says that he verily believes that the "Maury" was built, equipped, and loaded by and for the Russian government, to be used in the present war against the vessels and subjects of Great Britain.

Mr. Edwards then proceeds to state that a person, who he believes has been in the pay of the Russian government, gave him a full explanation of the armament and destination of the "Maury." He (Mr. Edwards) "gathered from the person referred to," that the plan of the "Maury" was to attack and capture one of the Cunard British mail steamers, arm the prize, and, after being joined by other vessels of the same construction, built and fitted out by the Russian government, to proceed to attack the "British possessions" in the East Indies.

The representations concerning the "Maury," which Mr. Edwards thus adopted, were so grossly improbable on their face, and had so much the air of a contrivance to impose on him, and, through him,

the British consul, as to produce some hesitation in my mind as to the propriety of instituting process in the case; but the specific and positive statements of Cornell and Craft, especially the former, as to the build, rig, armament, and imputed contents of the vessel, seemed to me, on the whole, to justify and require an examination of the case, at the hazard of possible inconvenience to innocent parties.

To make such examination effectual, it was necessary to libel the "Maury," and place her in charge of the marshal.

I have now received from Mr. McKeon a report of the result of the investigation.

It appears that the "Maury" was owned in part by Messrs. A. A. Low & Brothers, who have afforded satisfactory information as to her construction, character, and destination.

They make affidavit that she was built and equipped for trade with China, having, in addition to the ordinary armament of vessels in that business, only two deck-guns, deemed requisite on account of the increase of piracy in the seas of China.

It further appears, by these explanations, that the statements made as to the guns and munitions of war and extra spars on board the "Maury" were inaccurate, to use the mildest admissible expression; that the surmises as to the illegality of her character are not substantiated by proof; and that she is, in fact, advertised for general affreightment, and receiving cargo destined for Shanghae.

Neither Mr. Barclay nor Mr. Edwards brought forward any evidence to contradict these facts; on the contrary, Mr. Edwards has, in a letter addressed to Mr. McKeon, expressed his conviction of the propriety of dismissing the libel; which is also recommended unreservedly by Mr. McKeon.

Under these circumstances, it affords me pleasure to enable you to give assurance that the Cunard mail-steamers may continue to enter and to leave our ports, without apprehension of being captured by the "Maury," and converted into Russian men-of-war for the prosecution of hostilities in the East Indies.

I annex copies of Mr. McKeon's report; of the affidavits submitted by parties interested in the "Maury," or in her lading; and of the letter of Mr. Edwards to Mr. McKeon.

I am, very respectfully,

C. CUSHING.

Hon. WM. L. MARCY,
Secretary of State.

No. 20.

SOUTHERN DISTRICT OF NEW YORK,
U. S. District Attorney's Office, New York, November 20, 1855.

SIR: I have the honor to enclose a copy of a letter received from Hon. M. H. Grinnell.

I am not aware of any objection on our part, but still I desire to

have your assent to the application before I deliver the papers referred to in Mr. Grinnell's letter.

Very respectfully,

JOHN McKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney General, &c.

No. 21.

To John A. Stevens, Esq., Chairman of Committee of Chamber of Commerce.

The barque "Maury" was launched about the last of September; and, at an early day thereafter, the undersigned agreed, with Fogg Brothers, of this city, to take for them to the port of Shanghae, in China, two hundred tons of coal, one thousand barrels of merchandise, and seventy to eighty tons of measurement goods.

The coals not being at once available, ten mounted guns and their equipments, intended to have been sent by the "N. B. Palmer," but not ready in season for her, were sent to the vessel to be placed in her bottom, and to serve as ballast till the coal could be had. When this was put on board, the guns were raised between decks, and shortly afterwards the vessel was moved to her berth at pier 27 East river.

Having been publicly advertised by the undersigned for the port of Shanghae, in five daily papers, the "Maury" was receiving freight at the place above named on the seventeenth day of October, at 2 to 3 o'clock p. m., when the United States deputy marshal appeared on board, displaced the captain, and ordered the hatches of the vessel to be closed.

Captain Fletcher immediately made known to us what had taken place, and the writer repaired to the office of the United States district attorney to obtain an explanation. He was in court, and appointed the following morning for an interview. At 9 a. m. of Thursday, the 18th, the writer called at his office with his partner, Mr. Lyman, and Mr. Fogg, of the firm above referred to, and finding that the vessel had been seized by reason of information lodged against her by the British consul, as set forth in the accompanying deposition, the following statement was drawn up and sworn to. [See No. 14.]

This, the district attorney said, he would forward to Washington. In the meantime, he was willing to release the vessel on our giving bail, which we thought it best not to do.

From the district attorney the writer went to Mr. Barclay, made the explanations which had been given to the former, showed the order under which the guns had been purchased, and requested a withdrawal of his complaint against the barque. Mr. Barclay was not willing to act without first seeing Mr. Edwards, his counsel, and a party to the complaint. When called upon a second time, the state-

ment made to the district attorney was read to him, but he was still unwilling to act without Mr. Edwards.

On the following day, about forty-eight hours after the vessel was seized, Mr. Edwards called at the district attorney's office, withdrew the complaint, and the libel was lifted without any charge to the owners of the "Maury."

It is due to the district attorney to state, that in the meantime the vessel was allowed to receive cargo under the surveillance of two of the marshal's men.

On Monday, the 22d, Mr. Barclay called at the office of the subscribers, and expressed his regret that he had occasioned us so much trouble; and was told that the least he could do was publicly to acknowledge the error into which he had been betrayed, and to say that the vessel had been seized in ignorance of her ownership.

A paragraph from the *Boston Daily Advertiser* was shown to Mr. Barclay, as an evidence of the exaggerated character the report of the vessel's seizure was assuming in other places. On Wednesday, the 24th, the following appeared in the *New York Herald:*

"Misrepresentations on the above subject having been published in various newspapers—among others, that munitions of war were found on board, 'secreted under a quantity of cotton'—I desire to disabuse the mind of the public of that impression, by stating that such was not the case.

"Had my endeavors, made before information was formally lodged, to ascertain the owners of the ship Maury, succeeded, the explanations which that respectable firm, Messrs. A. A. Low & Brothers, gave after the libel was filed would have been sought by me, and no doubt would have been given before, and the course which was adopted would not have been resorted to.

"A. BARCLAY, *H. B. M.'s Consul.*

"NEW YORK, *October* 23, 1855."

The undersigned beg to say, that it had been publicly announced in New York papers, again and again, that the vessel was building for them; she was publicly advertised in their name; insurance had been done upon her to a large amount in Wall street; the deponents Cornell and Craft are well known to the builders, are accustomed to be in their yard almost daily, and it is impossible to resist the conviction that to them at least it was known for whom she was preparing for sea.

They respectfully ask, then, if the evidence upon which the complaint is founded should be weighed against the character and standing of respectable and responsible men; if it was of a nature to warrant so extreme a measure, without the most rigid inquiry in a proper direction; and, when shown to be utterly worthless, whether the apology of Mr. Barclay was of that prompt and ample character which one honorable man should delight to make to another whose reputation he has, unwittingly, unjustly called in question?

A. A. LOW & BROTHERS,
By A. A. Low.

No. 22.

City and County of New York, ss.

John N. Cornell, policeman of the eleventh district of this city, acting as dockmaster, being duly sworn, doth depose and say: That in September last he was applied to, by the person acting as mate of the three-masted schooner or ship "Maury," then launched about one week from the shipyard of Roosevelt, Joice, & Co., to give said vessel a berth at the foot of Stanton street, East river. That this deponent gave said vessel a berth, and was in the habit of seeing her every day whilst she lay at that berth. This deponent further says, his particular attention was called to said vessel by some cartmen telling him that they had seen cannon going on board, and asked this deponent if he knew what it meant. This deponent was then invited by the mate to go on board, which he did, and was shown by the said mate several cannon in the hold, and some small-arms in the cabin, and said mate at the same time remarked to mechanics working on board that he supposed there was a vessel of war waiting outside for us, and here was an officer on board (alluding to this deponent) ready to take possession of the vessel. And this deponent further says, that in reply to an inquiry made of the said mate, he said he had shipped on board the "Maury" to go to the China seas, but that he had a damned queer cargo to go there.

And this deponent, from these circumstances, and from what he had seen, had his suspicions excited that all was not right, and so stated in general conversation in his family, and in the presence of his son, John T. Cornell, a law student or clerk in the law office of Charles Edwards, esq., attorney at law, 35 Pine street, this city. A few days after this conversation in the family of this deponent, his son told this deponent that his employer, Mr. Edwards, would like to see him; and one or two days thereafter he repaired to the office of said Edwards, and in reply to his inquiries, and at his request, narrated the above circumstances; the said Edwards at the same time telling this deponent that some person, a stranger to him, had made to him similar statements. And this deponent further says, that said Edwards stated that the person who had been his informant told him that it was designed to fit out the "Maury" as a Russian privateer, for the purpose of capturing one of the Cunard English steamers, and asked this deponent to make an affidavit of what he had seen and heard of this vessel, and all other particulars relating to her or her equipment; but that this deponent should first get some person who was better acquainted with vessels, also to go on board and see what he could, as combative, particularly whether the vessel looked like a vessel of war.

And this deponent further says, that said Edwards told him that if he, this deponent, could be the means of detecting this movement, and it should turn out that the vessel was being fitted out for such a purpose, this deponent would receive a large reward. This deponent then returned to the station-house, and informed Lieutenant Craft of the circumstances, knowing that said Craft had been a ship-

carpenter by profession, and was a judge of vessels. Said Craft consented to go on board and look at the "Maury," and did go on board and make examinations. And this deponent further says, that he and said Craft, a few days afterwards, went down to the office of said Charles Edwards, at whose request both this deponent and Craft went to the office of the United States district attorney, to make oath to the affidavits in the premises, which had been previously drawn up by said Edwards in his own office. And this deponent further says, that at the office of the district attorney he was presented to John McKeon, esq., to whom he stated the whole matter, and who, after reading this deponent's affidavit, stated that it was very suspicious, and that he thought there was enough to seize the vessel, and informed this deponent that, if there could be sufficient evidence obtained to seize the vessel, this deponent "would make a good thing of it."

And this deponent further says, that about one or two weeks after this, his son, John T., informed him that the owners, Messrs. Low, had explained everything satisfactorily to Mr. Edwards, and that the "Maury" had been allowed to sail.

JOHN N. CORNELL.

Sworn before me, this 23d November, 1855.

FERNANDO WOOD, *Mayor.*

William D. Craft, lieutenant of the 11th district police, being duly sworn, deposes and says: That he is the person alluded to in the deposition above made by John N. Cornell, and that the said deposition is true, of his own knowledge, so far as it refers to this deponent going on board of the "Maury" at his request, and making an affidavit at the office of Mr. Charles Edwards, at the request of said Edwards. And this deponent further says, that his suspicions were somewhat excited as to the character of the "Maury," from her model, her rig, the armament on board, and the general rumor as to Russian privateers.

WM. D. CRAFT.

Sworn to this 23d November, 1855, before me.

FERNANDO WOOD, *Mayor.*

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE WITH

A resolution of the Senate of the 28th instant, calling for information relative to any proposition submitted to the United States government by that of Great Britain, to refer the difference between the two governments of the construction of the treaty of July 4, 1850, to arbitration.

FEBRUARY 29, 1856.—Read and ordered to be printed, and that 10,000 additional copies be printed, 1,000 of which shall be for the use of the State Department.

To the Senate of the United States:

I transmit a report from the Secretary of State, with accompanying papers, in answer to the resolution of the Senate of yesterday.

FRANKLIN PIERCE.

WASHINGTON, *February* 29, 1856.

To the President of the United States:

The Secretary of State, to whom was referred the resolution of the Senate of yesterday, requesting the President, if in his opinion it be not incompatible with the public interest, to inform that body "whether any offer has been made by the government of Great Britain to the government of the United States to refer to the arbitrament of some friendly power, or otherwise, the questions in difference between the two governments, upon the construction of the convention of 4th July, [19th April,] 1850, with any correspondence touching or concerning such proposed arbitration," has the honor to lay before the President the papers mentioned in the subjoined list, which contain all the information in this department called for by the resolution.

All which is respectfully submitted.

W. L. MARCY.

DEPARTMENT OF STATE,
Washington, February 29, 1856.

List of papers accompanying the report of the Secretary of State to the President, of the 29th of February 1856.

Mr. Buchanan to Mr. Marcy, (extract,) November 21, 1854.
The same to the same, (extracts,) November 2, 1855.
The same to the same, (extract,) November 9, 1855.
The same to the same, (extracts,) February 5, 1856.
The same to the same, (extract,) February 8, 1856.
Mr. Crampton to Mr. Marcy, February 27, 1856.
Lord Clarendon to Mr. Crampton, November 10, 1855.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 49.] LEGATION OF THE UNITED STATES,
London, November 21, 1854.

SIR: * * * * * * * *

In the course of the conversation, he intimated that it might be desirable to have the opinion of a third power on the true construction of the convention. To this I playfully observed that it would now be difficult to find an impartial umpire, as they had gone to war with our arbitrator, the Emperor of Russia. This was, however, but a mere intimation on his part. I then urged upon him, as strongly as I could, the reasons which I thought ought to induce the British government to relinquish the Bay islands to Honduras. He replied, that these islands were not of the least value to Great Britain, and the only question with them was whether the national honor did not forbid this course.

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Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 99.] LEGATION OF THE UNITED STATES,
London, November 2, 1855.

SIR: * * * * * * * * * *

According to the appointment mentioned in my last despatch, I met Lord Clarendon yesterday afternoon at the Foreign Office.

* * * * * * * * * * *

In the course of the conversation I observed to him, that the most serious difficulty between the governments might arise out of the Central American questions. He said that when two governments disagreed about the construction of a treaty, the best and most natural mode was to refer the question to a third power. At an early period of the negotiation he had made this suggestion; but I had jocularly replied that the Emperor of Russia was the only power sufficiently independent to act as an impartial umpire in the case, and they had gone to war with him. * * * * * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 101.] LEGATION OF THE UNITED STATES,
London, November 9, 1855.

SIR: I had an interview with Lord Clarendon on yesterday by appointment. * * * * * * * * * *

He then said, About these Central American questions, the best mode of settling them is by arbitration. I replied there was nothing to arbitrate. He said the true construction of the treaty was a proper subject for arbitration. I told him I did not consider it a question for construction at all; the language was plain and explicit, and I thought this would be the almost unanimous opinion of the American people; but, in writing to you, I should mention what he had now said, as I had done what he had said at our former interview. * *

Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extracts.]

[No. 119.] LEGATION OF THE UNITED STATES,
London, February 5, 1856.

SIR: * * * * * * * * * * * *

Ere this can reach Washington, you will have read the speeches of Lord Derby and Lord Clarendon in the House of Lords on Thursday evening last, which will speak for themselves.

Lord Clarendon says, in relation to the Central American questions: "In such a case correspondence is useless, and I lost no time in offering to refer the whole question to the arbitration of any third power, both sides agreeing to be bound by the decision. That offer has not yet been accepted; it has been renewed, and I hope that, upon further consideration, the government of the United States will agree to it."

* * * * * * * *

It is, therefore, proper for me to state, as a matter of fact, that I have reported to you, in the most faithful manner, every conversation which has passed between Lord Clarendon and myself on the subject of a reference of these questions to a friendly power. As I have never learned that the British government has made any such offer to the government of the United States through Mr. Crampton, I infer that his lordship must have referred to the general conversations between him and myself, which would by no means justify the broad terms of his statement. Thus much merely to vindicate the truth of history.

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Yours, very respectfully,
JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Buchanan to Mr. Marcy.

[Extract.]

[No. 120.] LEGATION OF THE UNITED STATES,
London, February 8, 1856.

SIR: On Wednesday last, the 6th instant, I had an interview with Lord Clarendon at the Foreign Office. I told him I desired to ascertain whether the statement he had made in the House of Lords on the evening of Thursday, the 31st ultimo, that the British government had made to the American government an offer, which has been recently renewed, to arbitrate the Central American questions, was founded on what had passed between him and myself in conversation; or whether he had instructed Mr. Crampton to make to you, in writing, a formal proposal for arbitration. He replied, that his statement was founded on our different conversations; and that, in these, he had several times proposed to me a reference of these questions to arbitration; and he expressed the hope that I had communicated his propositions to my government. I informed him that I had faithfully reported to you all the conversations we had held in reference to an arbitration; but I had not believed that what he had said on these occasions amounted to such an offer as could be recognised by our government as a foundation for specific action on so grave a matter. I added, that I did not doubt

you were of the same opinion, as I had never received a line from you on the subject. He observed, that before holding these conversations with me, he had consulted the cabinet, and spoke their sentiments as well as his own. I remarked that this fact had now, for the first time, been communicated to me. If he had informed me of it at the time, this would have given his conversation a more serious character, and caused it to make a deeper impression on my mind. He said he had thought that, as a matter of course, I would consider what he had said to me had been said after consultation with the cabinet. In reply, I observed that I had thought, when one nation desired to propose to another the submission of an international dispute to arbitration, this would be done by writing, and in due form. Such had been their own course when they proposed to arbitrate the Oregon question. Besides, the President might, if he thought proper, consult the Senate on the question; and what would be thought by that body, if such a proposition were presented to them in the loose form of various conversations between him and myself, which, after all, I might, through mistake or inadvertence, not have reported correctly? He said that what he had done he considered the preliminary step; and if our government had indicated any satisfaction with it, they would have been prepared to proceed further; but from what I had said to him, he did not think they had received much encouragement. I told him that whenever I had spoken to him upon the subject, I had always been careful to assure him that I was expressing my own individual sentiments, without any instructions or information from my government; and that these remained unchanged. I also observed that his last letter to me, finally denying our construction of the treaty, and forming an issue between the two governments, might appropriately have contained a proposition for arbitration; and in this manner the question might have been brought in regular form before our government. He then, for the first time, informed me that he had addressed a despatch to Mr. Crampton on the subject, with instructions to him to read it to you. He then sent for it, and read it to me. I believe it is dated in November; but a copy being doubtless in your possession, it will speak for itself: and he informed me that all you had said about it to Mr. Crampton was, that the matter was in Mr. Buchanan's hands.

He proceeded to express a decided opinion in favor of arbitration, and said that when two friendly governments disagreed upon the construction of a treaty, the natural and appropriate course was to refer the question to a third friendly power. He had ever firmly believed their construction of the treaty to be correct. He then requested me to communicate to you their proposal for an arbitration, and how anxious they were that the question might be settled in this manner. I told him I should cheerfully comply with his request, but repeated that my own individual opinions remained unchanged. I considered the language of the treaty too clear for serious doubt; and such I believed was the opinion of public men of all parties in the United States. This had been evinced by the recent debate in the Senate on the President's message. Besides, the difficulty of selecting a suitable

sovereign as an arbitrator seemed insurmountable. But I said this was a question for my government, and not for myself.

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Yours, very respectfully,

JAMES BUCHANAN.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Crampton to Mr. Marcy.

[Received at the Department of State on the 27th of February, at 11 o'clock p. m.]

WASHINGTON, *February* 27, 1856.

MY DEAR SIR: Observing that some misapprehension seems to exist as to the offer made by Lord Clarendon to Mr. Buchanan, to submit the points regarding the interpretation of the Clayton-Bulwer treaty, upon which the two governments disagree, to arbitration, I think it well to send you the enclosed despatch, which I received from Lord Clarendon on the subject in December last. I regret not having made you this communication before; but the truth is, that the last paragraph of the despatch escaped my attention until I referred to it lately: and as I was aware that the negotiation of the question regarding Central America was in Mr. Buchanan's and Lord Clarendon's hands, I considered the despatch as meant merely for my own information as to what was going forward upon a subject in regard to which I inferred you were already informed.

Believe me yours, very faithfully,

JOHN F. CRAMPTON.

P. S.—I send the original despatch, which I will beg of you to return to me, but I have no objection to your taking a copy of it

J. F. C.

Lord Clarendon to Mr. Crampton.

[No. 258.] FOREIGN OFFICE, *November* 10, 1855.

SIR: Mr. Buchanan having, in the course of conversation a few days ago, adverted to the impression that would be created in the United States by the non-settlement of the Central American question, I again assured him that England had no wish to extend her influence, or to obtain any territory in that part of the world; and I reminded him that, as the difference between this country and the United States turned solely upon the interpretation of the treaty of 1850, I had offered, on the part of her Majesty's government, to submit the case to the arbitration of a third power, but that he had declined the offer.

Aug. 27, 1857.

Her Majesty's government, I said, would still abide by that offer, and thought it would be the fairest and most amicable manner of arriving at a settlement of the question.

Mr. Buchanan said he would make it known to his government, and you are instructed to communicate this despatch to Mr. Marcy.

I am, with great truth and regard, sir, your most obedient, humble servant,

CLARENDON.

J. F. CRAMPTON, Esq., *&c.*, *&c.*, *&c.*

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